
United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN TWO VOLUMES.)

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Plaintiff in Error,

vs.

CALIFORNIA ADJUSTMENT COMPANY, a
Corporation,

Defendant in Error.

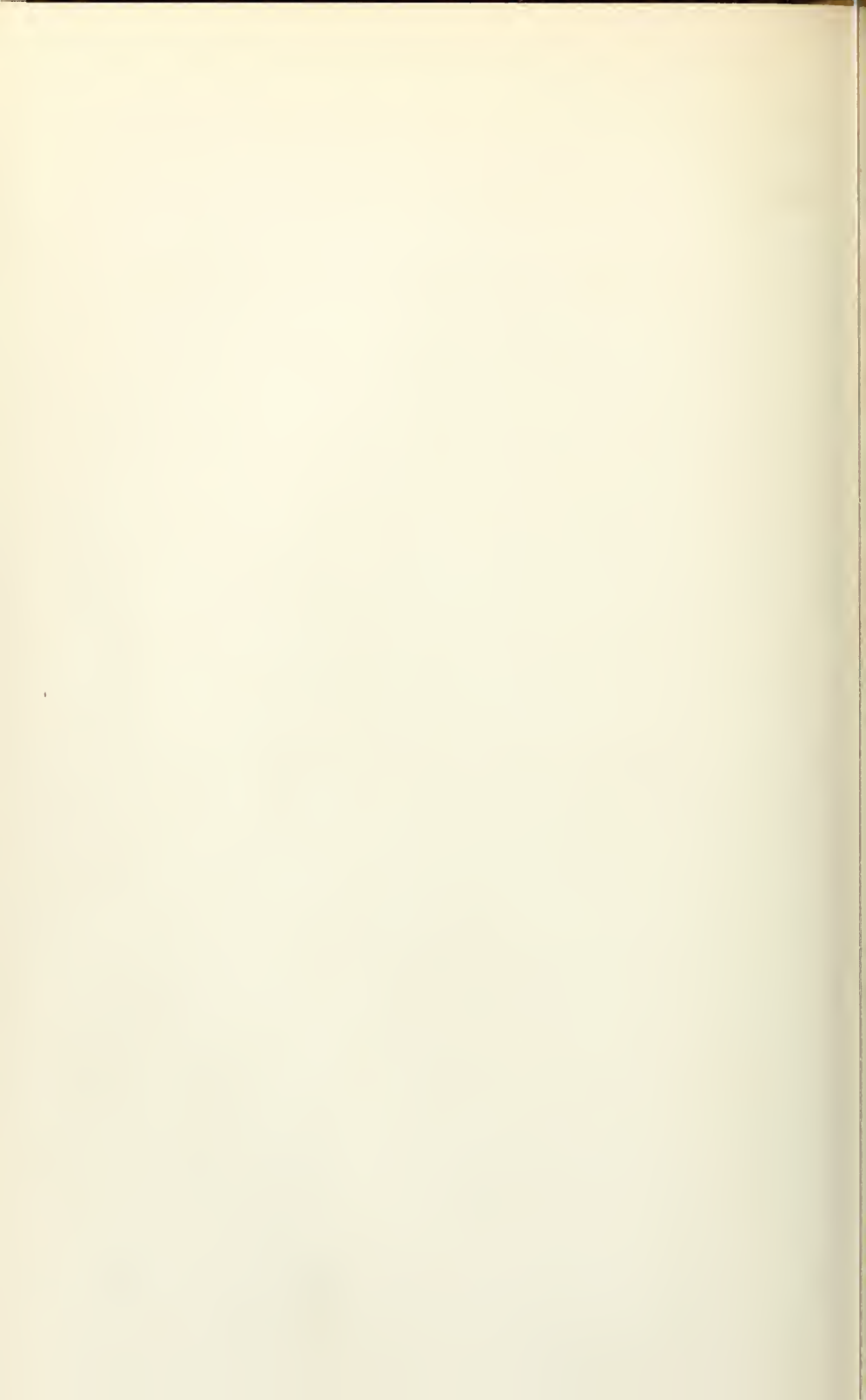
VOLUME II.
(Pages 321 to 545, Inclusive.)

Upon Writ of Error to the United States District Court
of the Northern District of California,
Second Division.

Filed

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F. D. Munckton,
Clerk



No. 2643

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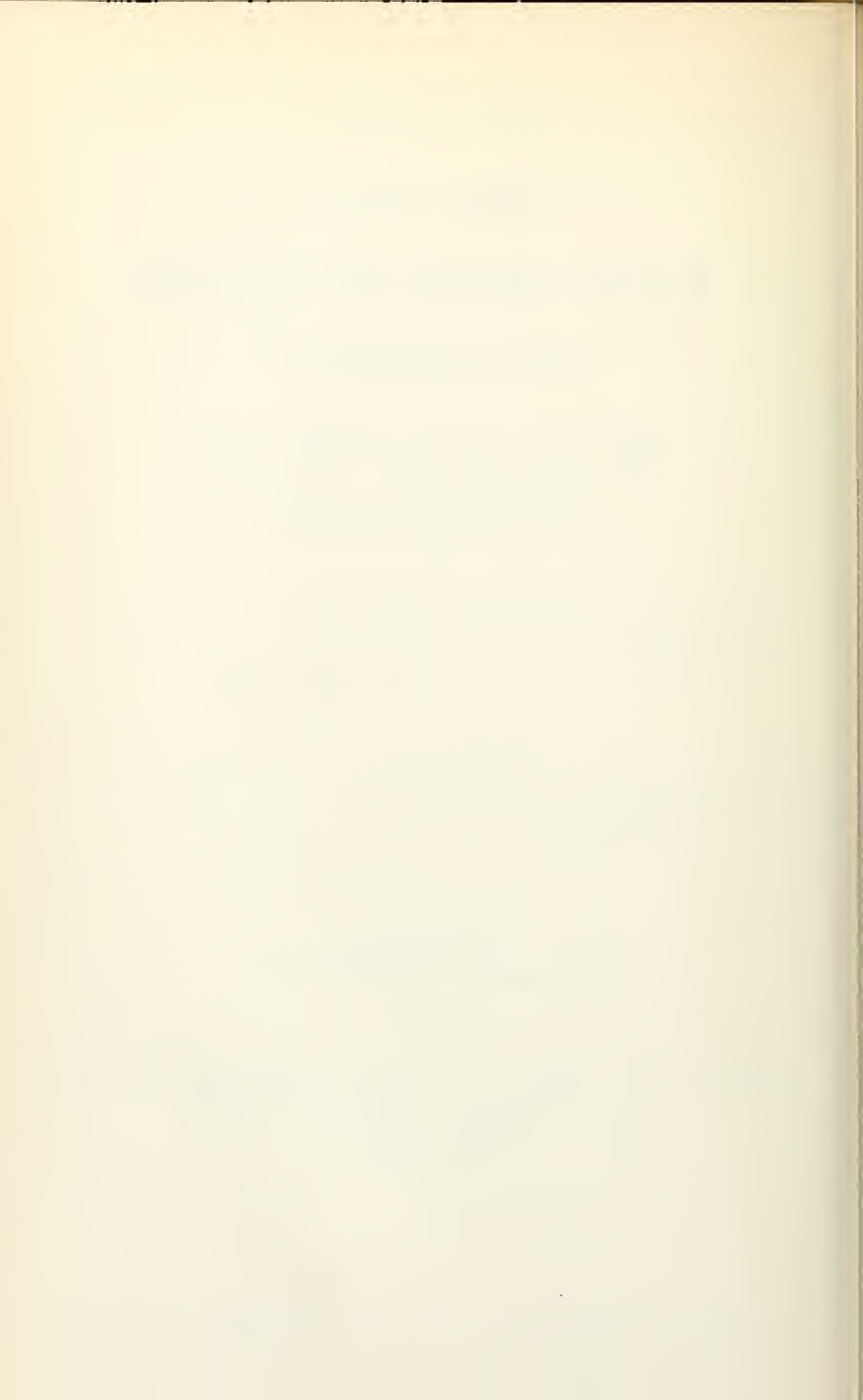
vs.

CALIFORNIA ADJUSTMENT COMPANY, a
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Defendant in Error.

VOLUME II.
(Pages 321 to 545, Inclusive.)

Upon Writ of Error to the United States District Court
of the Northern District of California,
Second Division.



Cause of Action No. 117.

For another, further and separate cause of action against said defendant said plaintiff alleges :

I.

That plaintiff is, and at all times herein mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of California; that its principal place of business is, and at all times herein mentioned was, in the Northern District of California; that plaintiff is and at all times was a resident of said district:

II.

That defendant is, and at all times herein mentioned was, a corporation organized and existing under and by virtue of the laws of the State of Kentucky. That at all times herein mentioned said defendant was a common carrier of persons and property within the State of California, and at all said times was engaged in the occupation of transporting for hire persons and property by railroad within said State.

III.

That said defendant operates, and at all times herein mentioned operated, a railroad from the City of San Francisco in said State, hereinafter called the point of shipment, to the City of Los Angeles in said State, which railroad from said point of shipment to said City of Los Angeles passes through the station of Fresno, hereinafter called the station of delivery; that said City of Los Angeles is more distant from said point of shipment than said station of delivery; that at all times herein mentioned said de-

defendant was engaged in the occupation of transporting for hire persons and property by said railroad, and at all said times was a common carrier of persons and property by said railroad; that said railroad is entirely within the State of California.

IV.

That on the 4 day of November, 1911, at the said point of shipment, Western Building Material Co. delivered to defendant for transportation from said point of shipment to Madary's Planing Mill, hereinafter called plaintiff's assignor, at said station of delivery, 11,680 pounds of lathes; that said defendant transported said property from said point of shipment to said station of delivery, and thereupon notified plaintiff's assignor that said property was ready for delivery; that defendant then and there demanded that plaintiff's assignor pay to defendant for the transportation of said property from said point of shipment to said station of delivery the sum of 47 cents per hundred pounds; that at said time, and at all times in this paragraph mentioned, defendant charged for the transportation in the same direction of the same class of property from said point of shipment to the said City of Los Angeles the sum of 42½ cents per hundred pounds; that in order to obtain the possession and delivery of said property so transported by said defendant, and at the time of the delivery of said property to plaintiff's assignor, to wit, on the 6 day of November, 1911, said plaintiff's assignor was compelled to pay and did pay to said defendant the said charges so demanded by defendant for the transportation of said property, to

wit, the sum of \$54.90; that said property was covered by defendant's waybill No. 4098; that the said payment so made, and the said charges so exacted by defendant exceeded by the sum of \$5.26 (hereinafter called said excessive charge) the charge then made by defendant for the transportation in the same direction of the same amount and class of property from the said point of shipment to the said City of Los Angeles.

V.

That prior to the commencement of this action plaintiff's assignor duly assigned, transferred and set over unto plaintiff the said claim and demand of plaintiff's assignor for the recovery of said excessive charge. That prior to the commencement of this action plaintiff demanded of defendant that defendant pay to plaintiff, as the assignee of said plaintiff's assignor, the amount of said excessive charge. That defendant has not paid the same or any part thereof.

VI.

That defendant has never been in any case authorized by the railroad commission of the State of California to charge less for longer than for shorter distances for the transportation of property; that said railroad commission has never prescribed that defendant might in any case whatsoever be relieved to any extent from the prohibition of the constitution of California to charge less for a longer than for the shorter haul.

That plaintiff's assignor is, and at all times herein mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of California. [117]

Cause of Action No. 118.

For another, further and separate cause of action against said defendant said plaintiff alleges:

I.

That plaintiff is, and at all times herein mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of California; that its principal place of business is, and at all times herein mentioned was, in the Northern District of California; that plaintiff is and at all times was a resident of said district.

II.

That defendant is, and at all times herein mentioned was, a corporation organized and existing under and by virtue of the laws of the State of Kentucky. That at all times herein mentioned said defendant was a common carrier of persons and property within the State of California, and at all said times was engaged in the occupation of transporting for hire persons and property by railroad within said State.

III.

That said defendant operates, and at all times herein mentioned operated, a railroad from the City of San Francisco in said State, hereinafter called the point of shipment, to the City of Los Angeles in said State, which railroad from said point of shipment to said City of Los Angeles passes through the station of Fresno, hereinafter called the station of delivery; that said City of Los Angeles is more distant from said point of shipment than said station of delivery; that at all times herein mentioned said de-

defendant was engaged in the occupation of transporting for hire persons and property by said railroad, and at all said times was a common carrier of persons and property by said railroad; that said railroad is entirely within the State of California.

IV.

That on the 22 day of March, 1912, at the said point of shipment, Geo. H. Tay Co. delivered to defendant for transportation from said point of shipment to Valley Foundry & Machine Works, hereinafter called plaintiff's assignor, at said station of delivery, 24,000 pounds of steel pulleys & bushings; that said defendant transported said property from said point of shipment to said station of delivery, and thereupon notified plaintiff's assignor that said property was ready for delivery; that defendant then and there demanded that plaintiff's assignor pay to defendant for the transportation of said property from said point of shipment to said station of delivery the sum of 33½ cents per hundred pounds; that at said time, and at all times in this paragraph mentioned, defendant charged for the transportation in the same direction of the same class of property from said point of shipment to the said City of Los Angeles the sum of 30 cents per hundred pounds; that in order to obtain the possession and delivery of said property so transported by said defendant, and at the time of the delivery of said property to plaintiff's assignor, to wit, on the 23d day of March, 1912, said plaintiff's assignor was compelled to pay and did pay to said defendant the said charges so demanded by defendant for the transportation of said property,

to wit, the sum of \$80.40; that said property was covered by defendant's waybill No. 28,569; that the said payment so made, and the said charges so exacted by defendant exceeded by the sum of \$8.40 (hereinafter called said excessive charge) the charge then made by defendant for the transportation in the same direction of the same amount and class of property from the said point of shipment to the said City of Los Angeles.

V.

That prior to the commencement of this action plaintiff's assignor duly assigned, transferred and set over unto plaintiff the said claim and demand of plaintiff's assignor for the recovery of said excessive charge. That prior to the commencement of this action plaintiff demanded of defendant that defendant pay to plaintiff, as the assignee of said plaintiff's assignor, the amount of said excessive charge. That defendant has not paid the same or any part thereof.

VI.

That defendant has never been in any case authorized by the railroad commission of the State of California to charge less for longer than for shorter distances for the transportation of property; that said railroad commission has never prescribed that defendant might in any case whatsoever be relieved to any extent from the prohibition of the constitution of California to charge less for the longer than for the shorter haul.

That plaintiff's assignor is, and at all times herein mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of California. [118]

Cause of Action No. 119.

For another, further and separate cause of action against said defendant said plaintiff alleges:

I.

That plaintiff is, and at all times herein mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of California; that its principal place of business is, and at all times herein mentioned was, in the Northern District of California; that plaintiff is and at all times was a resident of said district.

II.

That defendant is, and at all times herein mentioned was, a corporation organized and existing under and by virtue of the laws of the State of Kentucky. That at all times herein mentioned said defendant was a common carrier of persons and property within the State of California, and at all said times was engaged in the occupation of transporting for hire persons and property by railroad within said State.

III.

That said defendant operates, and at all times herein mentioned operated, a railroad from the City of San Francisco in said State, hereinafter called the point of shipment, to the City of Los Angeles in said State, which railroad from said point of shipment to said City of Los Angeles passes through the station of Fresno, hereinafter called the station of delivery; that said City of Los Angeles is more distant from said point of shipment than said station of delivery; that at all times herein mentioned said

defendant was engaged in the occupation of transporting for hire persons and property by said railroad, and at all said times was a common carrier of persons and property by said railroad; that said railroad is entirely within the State of California.

IV.

That on the 6 day of March, 1912, at the said point of shipment, North American Mercantile Co. delivered to defendant for transportation from said point of shipment to Kamikawa Bros., hereinafter called plaintiff's assignor, at said station of delivery, 40,000 pounds of rice; that said defendant transported said property from said point of shipment to said station of delivery, and thereupon notified plaintiff's assignor that said property was ready for delivery; that defendant then and there demanded that plaintiff's assignor pay to defendant for the transportation of said property from said point of shipment to said station of delivery the sum of 36 cents per hundred pounds; that at said time, and at all times in this paragraph mentioned, defendant charged for the transportation in the same direction of the same class of property from said point of shipment to the said City of Los Angeles the sum of 27½ cents per hundred pounds; that in order to obtain the possession and delivery of said property so transported by said defendant, and at the time of the delivery of said property to plaintiff's assignor, to wit, on the 8 day of March, 1912, said plaintiff's assignor was compelled to pay and did pay to said defendant the said charges so demanded by defendant for the transportation of said prop-

erty, to wit, the sum of \$144.00; that said property was covered by defendant's waybill No. 515; that the said payment so made, and the said charges so exacted by defendant exceeded by the sum of \$34.00 (hereinafter called said excessive charge) the charge then made by defendant for the transportation in the same direction of the same amount and class of property from the said point of shipment to the said City of Los Angeles.

V.

That prior to the commencement of this action plaintiff's assignor duly assigned, transferred and set over unto plaintiff the said claim and demand of plaintiff's assignor for the recovery of said excessive charge. That prior to the commencement of this action plaintiff demanded of defendant that defendant pay to plaintiff, as the assignee of said plaintiff's assignor, the amount of said excessive charge. That defendant has not paid the same or any part thereof.

That plaintiff's assignor is, and at all times herein mentioned was, a corporation duly organized and ex-of California. [119]

Cause of Action No. 120.

For another, further and separate cause of action against said defendant said plaintiff alleges:

I.

That plaintiff is, and at all times herein mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of California; that its principal place of business is, and at all times herein mentioned was, in the Northern District of California; that plaintiff is and at all times was

a resident of said district.

II.

That defendant is, and at all times herein mentioned was, a corporation organized and existing under and by virtue of the laws of the State of Kentucky. That at all times herein mentioned said defendant was a common carrier of persons and property within the State of California, and at all said times was engaged in the occupation of transporting for hire persons and property by railroad within said State.

III.

That said defendant operates, and at all times herein mentioned operated, a railroad from the City of San Francisco in said State, hereinafter called the point of shipment, to the City of Los Angeles in said State, which railroad from said point of shipment to said City of Los Angeles passes through the station of Fresno, hereinafter called the station of delivery; that said City of Los Angeles is more distant from said point of shipment than said station of delivery; that at all times herein mentioned said defendant was engaged in the occupation of transporting for hire persons and property by said railroad, and at all said times was a common carrier of persons and property by said railroad; that said railroad is entirely within the State of California.

IV.

That on the 29 day of September, 1912, at the said point of shipment, North American Mercantile Co. delivered to defendant for transportation from said point of shipment to Kamikawa Bros., hereinafter

called plaintiff's assignor, at said station of delivery, 40,000 pounds of rice; that said defendant transported said property from said point of shipment to said station of delivery, and thereupon notified plaintiff's assignor that said property was ready for delivery; that defendant then and there demanded that plaintiff's assignor pay to defendant for the transportation of said property from said point of shipment to said station of delivery the sum of 36 cents per hundred pounds; that at said time, and at all times in this paragraph mentioned, defendant charged for the transportation in the same direction of the same class of property from said point of shipment to the said City of Los Angeles the sum of 27½ cents per hundred pounds; that in order to obtain the possession and delivery of said property so transported by said defendant, and at the time of the delivery of said property to plaintiff's assignor, to wit, on the 2 day of October, 1912, said plaintiff's assignor was compelled to pay and did pay to said defendant the said charges so demanded by defendant for the transportation of said property, to wit, the sum of \$144.00; that said property was covered by defendant's waybill No. 3837; that the said payment so made, and the said charges so exacted by defendant exceeded by the sum of \$34.00 (hereinafter called said excessive charge) the charge then made by defendant for the transportation in the same direction of the same amount and class of property from the said point of shipment to the said City of Los Angeles.

V.

That prior to the commencement of this action plaintiff's assignor duly assigned, transferred and set over unto plaintiff the said claim and demand of plaintiff's assignor for the recovery of said excessive charge. That prior to the commencement of this action plaintiff demanded of defendant that defendant pay to plaintiff, as the assignee of said plaintiff's assignor, the amount of said excessive charge. That defendant has not paid the same or any part thereof.

That plaintiff's assignor is, and at all times herein mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of California. [120]

WHEREFORE, plaintiff prays judgment against defendant for the sum of three thousand and ninety-six and 65/100 dollars (\$3096.65); for interest on each excessive charge at the rate of seven per cent per annum from the date of payment thereof to date; and for its costs of suit.

HOEFLER, COOK, HARWOOD & MORRIS,

Attorneys for Plaintiff.

State of California,

City and County of San Francisco,—ss.

P. R. Thompson, being duly sworn, deposes and says: That he is an officer, to wit, the secretary of California Adjustment Company, a corporation, the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof and that the same is true of his own knowledge.

P. R. THOMPSON.

Subscribed and sworn to before me this 14th day of January, 1913.

[Seal] W. H. PYBURN.

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed January 14th, 1913. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.
[121]

*In the District Court of the United States, in and for
the Northern District of California.*

No. 15,638.

CALIFORNIA ADJUSTMENT COMPANY, a
Corporation,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Defendant.

Answer.

Now comes Southern Pacific Company, defendant in the above-entitled action, and answering plaintiff's complaint filed herein admits, denies and avers as follows:

I.

Defendant admits that at all times in the complaint mentioned it was a common carrier of persons and property by steam railroad from the City of San Francisco in the State of California to the City of Los Angeles, in the State of California, its rail line passing through the points referred to in

the complaint as stations of delivery, and that it was also such common carrier by rail from said City of Los Angeles to said City of San Francisco through said stations of delivery. Defendant denies that its railroad is entirely within the State of California, and in that behalf alleges that its said railroad line between the City of San Francisco and the City of Los Angeles forms, and at all times stated in said complaint formed, a component, integral and essential part of an interstate system of steam railroads, connected one with the other, acquired, held, [122] maintained and operated by said defendant as a unit and as an interstate system for the transportation of freight and passengers in interstate and intrastate commerce within the States of Oregon, California, Nevada, Utah, Arizona and New Mexico, and as a system for the transportation of freight and passengers in interstate commerce between and among said last-named States and each and all of them.

II.

Answering the allegations of paragraph IV of each of plaintiff's separately stated causes of action to the effect that plaintiff's assignors were compelled to pay said charges, defendant denies that plaintiff's assignors were compelled to pay said charges, and in this behalf defendant avers that said charges were paid by said plaintiff's assignors without protest. In this behalf defendant admits, in relation to the charges referred to in paragraphs IV of causes of actions 1 to 57 both inclusive, 66, 67, 75 to 85, both inclusive, and 89 to 120, both inclusive, that it would not have delivered said property to plaintiff's as-

signors if said charges demanded by defendant had not been paid; and defendant admits in relation to the charges referred to in paragraphs IV of causes of action 58 to 65, both inclusive, 68 to 74, both inclusive, and 86 to 88, both inclusive, that it would not have transported said property if said charges demanded by defendant had not been paid.

III.

Defendant denies that any charge collected by it for the transportation of the property described in paragraph IV of each of plaintiff's separately stated causes of action was in excess of the charge then made by defendant for the transportation in the same direction of the same class of property from said points of shipment either to the City of Los Angeles, or to the City of San Francisco, it being the intent of this denial to admit that [123] the charges so collected by defendant for the transportation of said property exceeded by the amounts alleged in each separately stated cause of action the charges then made by defendant for the transportation in the same direction from the point of shipment either to the City of Los Angeles or the City of San Francisco of property of the same kind and physical characteristics and described as the same class in the rate sheets and tariffs of defendant; but to deny that said property then transported from said points of shipment either to the City of Los Angeles or the City of San Francisco is of the same class as the property transported from the points of shipment upon which said charges were collected, as alleged in the complaint, because of the fact that

the charges then made by defendant for the transportation from San Francisco to Los Angeles, or from Los Angeles to San Francisco, of property of the same kind and physical characteristics and described as the same class in the rate sheets and tariffs of defendant as that transported by defendant, as stated in the complaint, to points between San Francisco and Los Angeles were forced down and controlled by actual competition by water between San Francisco and Los Angeles; and that for this reason the property transported by defendant as alleged in the complaint was not property of the same class as the property on which lower through rates from San Francisco to Los Angeles or from Los Angeles to San Francisco were then charged by defendant.

IV.

Defendant denies that it has never been in any case authorized by the Railroad Commission of the State of California to charge less for longer than for shorter distances for the transportation of property; and in that behalf alleges that in each case stated in said complaint where for the transportation of property it charged more for the shorter distance than for the longer distance, in the same direction, of the same amount [124] and class of property, it had been expressly so authorized to do by said Railroad Commission.

V.

Defendant denies that said Railroad Commission of the State of California has never prescribed that defendant might, in any case whatsoever, be relieved

to any extent from the prohibition of the Constitution of the State of California to charge less for the longer than for the shorter haul, and in that behalf alleges that in the case of all of the shipments described in said complaint as having moved or having been delivered after October 10, 1911, the said Railroad Commission had prescribed, by an order duly given and made, that the defendant might be relieved from the prohibition of the Constitution of California against charging less for the longer than for the shorter haul.

VI.

Defendant denies that any charge collected by it as alleged in paragraph IV of each of plaintiff's separately stated causes of action exceeded by any amount whatsoever the charge then made by defendant for the transportation in the same direction of the same class of property from the City of Los Angeles to the City of San Francisco, or from the City of San Francisco to the City of Los Angeles. The words "class of property," used in this denial, are used in the same sense as they are used in and explained by paragraph III of this answer.

FOR A FIRST FURTHER AND SEPARATE DEFENSE, defendant states that at all the times mentioned in said complaint it was operating and now operates a steam railroad for the transportation of freight and passengers between the City of San Francisco and the City of Los Angeles, which said railroad passed and passes through the points called by the complainant "intermediate." [125] That the City of San Francisco is and at all the times

mentioned in said complaint was situated on tide-water, and that defendant's freight terminal in the City of Los Angeles is and at all the times mentioned in said complaint was situated within a comparatively short distance from tide-water, and connected therewith by rail so that common carriers by water competed freely with defendant in the carriage of freight between San Francisco and the City of Los Angeles, of each and all of the properties and commodities described in paragraph IV of each of plaintiff's separately stated causes of action. That the effect of such competition by said water carriers is, and was at all the times in said complaint stated, to hold down through rates by rail between San Francisco and Los Angeles, on all of the property and commodities referred to in plaintiff's complaint, and to compel defendant to establish and maintain such through rates in competition with said water carriers and at less than a reasonable rate for the service performed. That the intermediate rates maintained by said defendant out of San Francisco toward Los Angeles by rail, and out of Los Angeles and toward San Francisco by rail, being the rates charged and collected as alleged in plaintiff's complaint, were and are reasonable rates for the service performed, and that to reduce said intermediate rates so as to comply with Section 21 of Article XII of the Constitution of California, as the same existed from 1879 until October 10, 1911, or so as to comply with said Section 21 as amended October 10, 1911, would require defendant to establish such intermediate rates at less than a reasonable compensation

for the services performed, and would deprive it of its property without due process of law, and would deprive it of the equal protection of the law, and would compel defendant to devote its property to public use at less than a reasonable return on the fair value of its property so [126] devoted.

FOR A SECOND FURTHER AND SEPARATE DEFENSE, defendant states that Section 21, Article XII, California Constitution, as the same existed from the year 1879 to October 10, 1911, is violative of the Constitution of the United States, in that, by attempting to fix rates without a hearing it deprives railroad carriers of due process of law; that if defendant herein is compelled by final judgment herein to refund to plaintiff, on account of the shipments described in plaintiff's complaint as having moved or having been delivered prior to October 10, 1911, all or any of the sums claimed by plaintiff to be excessive charges thereon, the effect and operation of said Section 21, Article XII, California Constitution, will be to have arbitrarily established said forced and compelled rates as intermediate rates against defendant, without due process of law.

FOR A THIRD FURTHER AND SEPARATE DEFENSE, defendant states that if said Section 21, Article XII, California Constitution, required the delivery of the goods mentioned in the complaint at the stations of delivery therein mentioned, at charges not exceeding the charges for the transportation of the same property in the same direction to said Los Angeles and San Francisco, respectively,

it is violative of the Constitution of the United States in that, if enforced as to any or all of plaintiff's separately stated causes of action, it would deprive the defendant of the equal protection of the law by denying it the right to meet the competition of carriers by water, which forces defendant's through rates between San Francisco and Los Angeles below a reasonable basis, as pleaded in defendant's first further and separate defense herein. [127]

FOR A FOURTH FURTHER AND SEPARATE DEFENSE, defendant states that as to the shipments specified in plaintiff's separately stated causes of action, that moved or were delivered prior to October 10, 1911, the rates collected for the transportation of each and all of them were rates established by the Railroad Commission of the State of California, pursuant to Section 22, Article XII, of the Constitution of the State of California, as it existed from 1879 to October 10, 1911; and said rates were at the time of their collection and are now conclusively just and reasonable.

FOR A FIFTH FURTHER AND SEPARATE DEFENSE, defendant states that the through rates on defendant's line of railroad from San Francisco to Los Angeles, and from Los Angeles to San Francisco, on the same kinds and quantities of property as those alleged by plaintiff to have been transported by defendant as stated in plaintiff's complaint to points intermediate San Francisco and Los Angeles, were forced down and compelled by an actual competition with carriers by water between San Fran-

cisco and Los Angeles, and that therefore the property transported by defendant to the points intermediate San Francisco and Los Angeles, as alleged in said complaint, was not property of the same class as property of the same physical character and commercially called by the same name, on which lower through rates of transportation by rail between San Francisco and Los Angeles were offered by defendant.

FOR A SIXTH FURTHER AND SEPARATE DEFENSE, defendant states that Section 71 of the Public Utilities Act of the State of California, approved December 23, 1911, and effective March 23, 1912, being Chapter 14 of the Statutes of California of the Special Session of 1911, provides as follows: [128]

“(a) When complaint has been made to the commission concerning any rate, fare, toll, rental or charge for any product or commodity furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility has charged an excessive or discriminatory amount for such product, commodity or service, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection; *provided*, no discrimination will result from such reparation.

(b) If the public utility does not comply with the order for the payment of reparation within the time specified in such order, suit may be instituted in any court of competent jurisdic-

tion to recover the same. All complaints concerning excessive or discriminatory charges shall be filed with the commission within two years from the time the cause of action accrues, and the petition for the enforcement of the order shall be filed in the court within one year from the date of the order of the commission. The remedy in this section provided shall be cumulative and in addition to any other remedy or remedies in this act provided in case of failure of a public utility to obey an order or decision of the commission.”

That neither plaintiff nor any of its assignors, nor any person for or on behalf of plaintiff or any of its assignors, has at any time applied to the Railroad Commission of the State of California for an order of reparation under the provisions of said section, respecting any one, or more or all of the shipments described in plaintiff's separately stated causes of action, and that therefore each of plaintiff's causes of action as separately stated is barred by the provisions of said Public Utilities Act, and this court has no jurisdiction to give judgment in plaintiff's favor for the whole or any part of all or any of plaintiff's causes of action.

FOR A SEVENTH FURTHER AND SEPARATE DEFENSE, defendant states that as to each and all of the shipments referred to in plaintiff's separately stated causes of action, which moved or were delivered after October 10, 1911, the Railroad Commission of the State of California, pursuant to Section 21, Article XII, California Constitution, as

amended October 10, 1911, authorized defendant, after investigation, to charge more for the shorter [129] distance to the point intermediate San Francisco and Los Angeles to which such shipment was transported than for the longer distance in the same direction.

FOR AN EIGHTH FURTHER AND SEPARATE DEFENSE, defendant states that as to each and all of the shipments mentioned in plaintiff's complaint, which moved or were delivered after October 10, 1911, the rates charged and collected thereon by defendant were rates which, prior to October 10, 1911, had been established by the Railroad Commission of the State of California, and had not at the time of their collection as aforesaid been in any manner changed.

FOR A NINTH FURTHER AND SEPARATE DEFENSE, defendant states that as to all of the shipments mentioned in plaintiff's complaint, which moved or were delivered prior to October 10, 1911, the rate charged and collected for each of said shipments, as alleged in said complaint, was the rate published by said defendant and established by the Railroad Commission of the State of California, and as to said rates and each of them there is applicable Section 40 of an act of the Legislature of the State of California, approved March 19, 1909, providing for the organization of the Railroad Commission of the State of California, and defining its powers and duties, which said section provides:

“In all actions between private parties and

transportation companies subject to the provisions of this act, in respect to any rate, charge, order, rule or regulation published as required by this act, the published rate, charge, order, rule or regulation shall be deemed to be just and reasonable, and shall not be open to controversy except in and by way of such proceedings for that purpose before the Commission and the courts as are provided for in this act.”

That said Railroad Commission has never acted on or with respect to the rates collected by defendant for shipments described in the complaint as having moved prior to October 10, 1911. [130]

FOR A TENTH FURTHER AND SEPARATE DEFENSE, defendant states that each and all of the payments made by plaintiff's assignors to the defendant as specified and set forth in paragraph IV of each of plaintiff's separately stated causes of action, were made under the following circumstances:

The person, firm or corporation making such payment in each case paid the same without protest, and the amount paid by him to the defendant as alleged in said respective causes of action was collected by defendant in the belief that it was the lawful rate. The amount collected by said defendant in each of said cases was the amount specified by tariffs, which as to the shipments that moved prior to October 10, 1911, had been established by the Railroad Commission of the State of California, and as to the shipments that moved after October 10, 1911, had been established by said Railroad Commission. The

amount so paid was in each case no more than a reasonable compensation for the service performed by the defendant.

FOR AN ELEVENTH FURTHER AND SEPARATE DEFENSE, defendant states that each of the rates charged and collected by defendant as alleged in plaintiff's separately stated causes of action was when and as charged and collected a just and reasonable rate for the service performed.

FOR A TWELFTH FURTHER AND SEPARATE DEFENSE, defendant states that the railroad over which the shipments referred to in the complaint were transported was at all times mentioned in the complaint a part of a railroad system operated by defendant and was engaged in the carriage of freight and passengers in intrastate and interstate commerce. That for recovery of judgment herein plaintiff relies on Section 21 of Article XII of the Constitution of California, and particularly the provision thereof [131] known as the Long and Short Haul Clause. That the effect of the application of said clause to California intrastate shipments on defendant's rail line between San Francisco and Los Angeles would have been at all times mentioned in the complaint, and would be now, unduly to burden and interfere with the movement of freight passing over said line in interstate commerce, by subjecting it to a higher freight rate than intrastate freight of the same class and character moving between Los Angeles and San Francisco under the same circumstances said result would be brought about by reason of the fact that the through rail rates for

freight on defendant's line between San Francisco and Los Angeles were, at all times mentioned in the complaint and are now, compelled to be lower than reasonable rail rates for said service and distance, by actual competition by carriers by water between San Francisco and Los Angeles, of the same commodities. Defendant's interstate rail rates for the same commodities to and from Arizona and New Mexico points on defendant's railroad system into and out of San Francisco and Los Angeles were and are not so compelled, but are reasonable rates for the service performed, and therefore to apply said Long and Short Haul Clause between San Francisco and Los Angeles would be to subject said interstate commerce to a greater burden than intrastate commerce of the same character between San Francisco and Los Angeles, which said burden would be undue and unjust.

FOR A THIRTEENTH FURTHER AND SEPARATE DEFENSE, defendant states that neither plaintiff nor any of its assignors suffered pecuniary loss or damage by or as a direct result of any of the matters, facts, or things pleaded in plaintiff's separately stated causes of action.

WHEREFORE, defendant prays judgment that plaintiff take [132] nothing by this action, and that defendant recover its costs herein.

HENLEY C. BOOTH,
GEORGE D. SQUIRES,
Attorneys for Defendant.

WM. F. HERRIN,
E. W. CAMP,

Of Counsel. [133]

State of California,
City and County of San Francisco,—ss.

S. N. Bostwick, being first duly sworn, deposes and says: I am an officer, to wit, Assistant General Freight Agent, of the above-named defendant, and am familiar with the facts upon which the allegations and denials of the foregoing answer are based. I make this verification on behalf of said defendant. I have read the foregoing answer, and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated on information or belief, and as to such matters I believe it to be true.

S. N. BOSTWICK.

Subscribed and sworn to before me this 2d day of January, 1914.

[Seal]

E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California. [134]

Stipulation [That Answer May Stand as Answer to each Cause of Action, etc.].

IT IS HEREBY STIPULATED by and between the attorneys for the parties to the above-entitled action, that the foregoing answer may stand as an answer to each of the causes of action separately stated in plaintiff's complaint on file herein, the plaintiff, however, reserving all objections as to the sufficiency or validity of any one or more or all of the denials and allegations in the foregoing answer, as applied to any one or more or all of plaintiff's separately

stated causes of action, and reserving all objections as to the sufficiency or validity of any of the alleged further and separate defenses pleaded in said answer.

Plaintiff hereby acknowledges receipt of a copy of the foregoing answer.

Dated this 2d day of January, 1914.

HOEFLER, COOK, HARWOOD & MORRIS,

Attorneys for Plaintiff.

HENLEY C. BOOTH,
GEORGE D. SQUIRES,

Attorneys for Defendant.

The foregoing stipulation is hereby approved.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Jan. 7, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [135]

*In the District Court of the United States, in and for
the Northern District of California.*

No. 15,638.

CALIFORNIA ADJUSTMENT COMPANY, a
Corporation,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion.

Defendant.

Demurrer to Answer.

Now comes California Adjustment Company the plaintiff in the above-entitled action and demurs to the answer of defendant on file herein and for ground of demurrer specifies :

I.

That said answer does not state facts sufficient to constitute a defense or counterclaim.

Said plaintiff demurs to the first alleged further and separate defense set forth in said answer and for ground of demurrer specifies.

I.

That said alleged first further and separate defense does not state facts sufficient to constitute a defense or counterclaim.

Said plaintiff demurs to the second alleged further and separate defense set forth in said answer and for ground of demurrer specifies :

I.

That said alleged second further and separate defense [136] does not state facts sufficient to constitute a defense or counterclaim.

Said plaintiff demurs to the third alleged further and separate defense set forth in said answer and for ground of demurrer specifies :

I.

That said alleged third further and separate defense does not state facts sufficient to constitute a defense or counterclaim.

Said plaintiff demurs to the fourth alleged further and separate defense set forth in said answer and for

ground of demurrer specifies :

I.

That said alleged fourth further and separate defense does not state facts sufficient to constitute a defense or counterclaim.

Said plaintiff demurs to the fifth alleged further and separate defense set forth in said answer and for ground of demurrer specifies :

I.

That said alleged fifth further and separate defense does not state facts sufficient to constitute a defense or counterclaim.

Said plaintiff demurs to the sixth alleged further and separate defense set forth in said answer and for ground of demurrer specifies :

I.

That said alleged sixth further and separate defense does not state facts sufficient to constitute a defense or counterclaim. [137]

Said plaintiff demurs to the seventh alleged further and separate defense set forth in said answer and for ground of demurrer specifies :

I.

That said alleged seventh further and separate defense does not state facts sufficient to constitute a defense or counterclaim.

Said plaintiff demurs to the eighth alleged further and separate defense set forth in said answer and for ground of demurrer specifies :

I.

That said alleged eighth further and separate defense does not state facts sufficient to constitute a de-

fense or counterclaim.

Said plaintiff demurs to the ninth alleged further and separate defense set forth in said answer and for ground of demurrer specifies:

I.

That said alleged ninth further and separate defense does not state facts sufficient to constitute a defense or counterclaim.

Said plaintiff demurs to the tenth alleged further and separate defense set forth in said answer and for ground of demurrer specifies:

I.

That said alleged tenth further and separate defense does not state facts sufficient to constitute a defense or counterclaim. [138]

Said plaintiff demurs to the eleventh alleged further and separate defense set forth in said answer and for ground of demurrer specifies:

I.

That said alleged eleventh further and separate defense does not state facts sufficient to constitute a defense or counterclaim.

Said plaintiff demurs to the twelfth alleged further and separate defense set forth in said answer and for ground of demurrer specifies:

I.

That said alleged twelfth further and separate defense does not state facts sufficient to constitute a defense or counterclaim.

Said plaintiff demurs to the thirteenth alleged further and separate defense set forth in said answer and for ground of demurrer specifies:

I.

That said alleged thirteenth further and separate defense does not state facts sufficient to constitute a defense or counterclaim.

WHEREFORE, plaintiff prays that this demurrer be sustained and that plaintiff be awarded judgment as prayed for by the complaint.

HOEFLER, COOK, HARWOOD & MORRIS,

ALFRED J. HARWOOD,
Attorneys for Plaintiff.

Due service and receipt of a copy of the within Demurrer this 26th day of February, 1914.

HENLEY C. BOOTH,
GEO. D. SQUIRES,
Attorneys for Defendant.

[Endorsed]: Filed Feb. 26, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [139]

In the District Court of the United States, in and for the Northern District of California.

No. 15,638.

CALIFORNIA ADJUSTMENT COMPANY, a Corporation,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,

Defendant.

**Notice of Motion [to Strike Certain Parts of
Answer, etc.].**

To the Defendant in the Above-entitled Action and to
Messrs. H. C. Booth and George D. Squires, its
Attorneys.

You and each of you will please take notice that on
Monday the second day of March, 1914, at the hour
of ten o'clock A. M. or as soon thereafter as counsel
can be heard, the plaintiff will move the Court for an
order striking out certain parts of the answer of the
defendant filed herein, a copy of which said motion
is hereto annexed and made a part of this notice.

Dated February 26th, 1914.

HOEFLER, COOK, HARWOOD & MOR-
RIS,

ALFRED J. HARWOOD,
Attorneys for Plaintiff. [140]

*In the District Court of the United States, in and for
the Northern District of California.*

No. 15,638.

CALIFORNIA ADJUSTMENT COMPANY, a
Corporation,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Defendant.

Motion to Strike Out Parts of Answer.

Now comes California Adjustment Company the plaintiff in the above-entitled action and moves the Court for an order striking from the Answer of the defendant herein the following parts thereof:

1. The alleged first further and separate defense set forth in said answer.

2. The alleged second further and separate defense set forth in said answer.

3. The alleged third further and separate defense set forth in said answer.

4. The alleged fourth further and separate defense set forth in said answer.

5. The alleged fifth further and separate defense set forth in said answer.

6. The alleged sixth further and separate defense set forth in said answer.

7. The alleged seventh further and separate defense set forth in said answer.

8. The alleged eighth further and separate defense set forth in said answer. [141]

9. The alleged ninth further and separate defense set forth in said answer.

10. The alleged tenth further and separate defense set forth in said answer.

11. The alleged eleventh further and separate defense set forth in said answer.

12. The alleged twelfth further and separate defense set forth in said answer.

13. The alleged thirteenth further and separate defense set forth in said answer.

This motion is made upon the ground that said so-called separate defenses are, and each of them is, sham and irrelevant, and is based upon the complaint of plaintiff and the said answer of the defendant.

Dated February 26th, 1914.

HOEFLER, COOK, HARWOOD & MORRIS,

ALFRED J. HARWOOD,
Attorneys for Plaintiff.

Due service and receipt of a copy of the within Notice this 26th day of February is hereby admitted.

HENLEY C. BOOTH,
GEORGE D. SQUIRES,
Attorneys for Defendant.

[Endorsed]: Filed Feb. 26, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [142]

*In the District Court of the United States, in and for
the Northern District of California*

No. 15,638.

CALIFORNIA ADJUSTMENT COMPANY, a
Corporation,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Defendant.

Waiver of Jury.

The parties to the above-entitled action hereby waive a trial by jury.

Dated March 2d, 1914.

HOEFLER, COOK, HARWOOD & MORRIS,

Attorneys for Plaintiff,
HENLEY C. BOOTH,
GEO. D. SQUIRES,
Attorneys for Defendant.

[Endorsed]: Filed March 2d, 1914. Walter B. Maling, Clerk. [143]

At a stated term, to wit, the November term A. D. 1914, of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the courtroom in the City and County of San Francisco, on Wednesday, the 24th day of February, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 15,638.

CALIFORNIA ADJUSTMENT CO.

vs.

SOUTHERN PACIFIC CO.

Order Sustaining Demurrer in Part and Overruling Demurrer in Part.

Plaintiff's demurrer to answer and motion to strike out parts of answer, heretofore heard and sub-

mitted being now fully considered and the Court having filed its memorandum opinion thereon, it was ordered that said demurrer be and the same is hereby sustained as to each of the several special defenses other than the seventh special defense and that said demurrer as to the seventh special defense be and the same is hereby overruled. [144]

*In the District Court of the United States, in and for
the Northern District of California*

No. 15,638.

CALIFORNIA ADJUSTMENT COMPANY, a
Corporation,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Defendant.

Special Findings of Fact and Conclusion of Law.

The above-entitled action came on regularly for trial before the above-entitled court, Hon. WILLIAM C. VAN FLEET, Judge thereof, presiding, on the 6th day of May, 1915; Alfred J. Harwood, Esq., appearing as attorney for plaintiff, and Henley C. Booth, Esq., one of the attorneys of record for defendant, appearing as attorney for defendant.

Said action was tried upon the issues arising from the original complaint of plaintiff filed herein, and original answer of defendant filed herein, as such issues were settled by the order of this court sustaining the demurrer of plaintiff to all of the separately

stated separate defenses contained in defendant's answer, except the seventh further and separate defense contained therein.

Oral and documentary evidence was introduced on behalf of the respective parties, and the evidence having been closed the cause was submitted to the Court for consideration and decision.

Special findings of fact were demanded by defendant prior to the submission of said cause.

Whereupon, said Court, being fully advised in the premises, hereby makes its special findings of fact, and, in connection [145] with the admissions of the pleadings, its conclusion of law thereon.

FINDINGS OF FACT.

I.

That it is not true as alleged in paragraph IV of defendant's answer that in each or any instance stated in the complaint where for the transportation of property defendant charged more for the shorter distance than for the longer distance, in the same direction, of the same amount and class of property, defendant had been so authorized to do by said Railroad Commission.

II.

It is not true, as alleged in paragraph V of defendant's answer, that in the case of all or any of the shipments described in the complaint as having moved or having been delivered after October 10, 1911, the Railroad Commission of the State of California had prescribed, by order or otherwise, that the defendant might be relieved from the prohibition of the Constitution of the State of California against

charging less for the longer than for the shorter haul. Nor is it true, that, as alleged in defendant's seventh further and separate defense contained in its answer, that as to each and all or any of the shipments referred to in plaintiff's separately stated causes of action, which moved or were delivered after October 10, 1911, the Railroad Commission of the State of California, pursuant to Section 21, Article XII of the Constitution of the State of California, as amended October 10, 1911, or otherwise, authorized defendant, after investigation, or at all, to charge more for the shorter distance to the point between San Francisco and Los Angeles to which such shipment was transported, than for the longer distance in the same direction. [146]

III.

It is not true, as alleged in paragraph III of defendant's answer, that the property transported by defendant, as alleged in the several separately stated causes of action, was not property of the same class as the property on which lower through rates from Los Angeles to San Francisco were then being charged by defendant, but to the contrary the Court finds that such property was, in each instance, property of the same class as the property on which lower through rates were so charged.

CONCLUSION OF LAW.

As a conclusion of law from the foregoing findings of fact, taken in connection with the admissions made by the pleadings herein, as settled as aforesaid, the court hereby decides that plaintiff is entitled to judg-

ment as prayed for in its complaint.

Let judgment be entered in accordance herewith.

Done in open court this 2d day of June, 1915.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed June 2d, 1915. Walter B. Maling, Clerk. [147]

*In the District Court of the United States, in and for
the Northern District of California, Second
Division.*

No. 15,638.

CALIFORNIA ADJUSTMENT COMPANY, a
Corporation,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Defendant.

Judgment on Findings.

This cause having come on regularly for trial on the 5th day of May, A. D. 1915, before the Court, sitting without a jury, a trial by jury having been specially waived by stipulation filed herein; A. J. Harwood, Esq., appearing as attorney for plaintiff, and H. C. Booth, Esq., appearing as attorney for defendant; and oral and documentary evidence on behalf of the respective parties having been introduced and closed and the cause having been submitted to the Court for consideration and decision, and the Court after due deliberation having filed its special findings in writing, and ordered that judgment be entered herein in

accordance therewith:

Now therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that California Adjustment Company, a corporation, plaintiff, do have and recover of and from Southern Pacific Company, a corporation, defendant, the sum of three thousand nine hundred twenty-eight and 01/100 (\$3,928.01) Dollars, together with its costs herein expended taxed at \$38.70.

Judgment entered June 2, 1915.

WALTER B. MALING,
Clerk.

A True Copy. Attest:

[Seal] WALTER B. MALING,
Clerk.

[Endorsed]: Filed June 2, 1915. Walter B. Maling, Clerk. [148]

*In the District Court of the United States for the
Northern District of California.*

No. 15,638.

CALIFORNIA ADJUSTMENT CO. a Corp.

vs.

SOUTHERN PACIFIC COMPANY, a Corp.

Certificate of Clerk to Judgment-roll.

I, W. B. Maling, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing papers hereto annexed constitute the Judgment-roll in the above-entitled action.

Attest my hand and the seal of said District Court,
this 2d day of June, 1915.

[Seal]

WALTER B. MALING,
Clerk.

By J. A. Schaertzer,
Deputy Clerk.

[Endorsed]: Filed June 2, 1915. Walter B. Mal-
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.
[149]

*In the District Court of the United States, Northern
District of California, Second Division.*

CALIFORNIA ADJUSTMENT COMPANY,
Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY,
Defendant.

Memorandum Opinion.

A. J. HARWOOD and HOEFLER, COOK &
HARWOOD, for Plaintiff.

H. C. BOOTH and GEORGE D. SQUIRES, for
Defendant.

VAN FLEET, District Judge:

In this action, brought to recover from defendant, a common carrier, an accumulated sum of excess freight rates alleged to have been charged and collected by it from the assignors of plaintiff in violation of the so-called "long and short haul" clause of the Constitution of the State (Article 12, Section 21), the defendant has interposed thirteen separate and distinct special defenses, each of which has been

met by a demurrer and a motion to strike as constituting no valid defense. I have given the voluminous briefs and arguments for consideration, but shall content myself by stating my conclusions in a brief and general way.

(1) Logically, the sixth defense, as involving [150] the jurisdiction of the Court to entertain the action, should be first disposed of. Its allegations proceed upon the theory that the Court has no jurisdiction of the subject matter of the action because plaintiff has not applied to the Railroad Commission for a reparation order as provided in Section 71 of the Public Utilities Act of December 23, 1911, (Chapter 4, Stats. Cal., Spec. Sessn. 1911).

But this section has reference, when properly construed, only to instances where the question whether the carrier has charged an excessive or discriminatory rate is dependent upon facts to be ascertained from an investigation upon evidence taken by the Commission, as in *Texas & Pacific Ry. Co. vs. Abilene etc. Co.*, 204 U. S. 216, and *Robinson vs. B. & O. R. R.*, 222 U. S. 506. It can have no application to an instance where, as here, if the overcharge was made as alleged it was unwarranted as matter of law. In such case the rate "was unlawful under any pretense or for any cause" and was not a question to be referred to the Commission; (*Pennsylvania R. R. Co. vs. International Coal Co.*, 230 U. S. 184;) but falls within the provisions of Section 73 (subdivision A) of the Utilities Act, which authorizes the aggrieved party to prosecute an action in the courts "for any loss or injury arising from a failure of the

carrier to do any act or thing required to be done by the Constitution or any law of the State or any order or decision of the Commission." This defense is therefore untenable.

(2) The first, second and third special defenses are founded upon the defendant's claim that the [151] inflexible enforcement of the provision of the State Constitution in question under the conditions pleaded would operate to deprive defendant of its property without due process of law.

But that the enforcement of such a provision by the State is not repugnant to any right guaranteed by the Constitution of the United States has been distinctly announced in *Louisville & Nashville Railway Co. vs. Kentucky*, 183 U. S. 503, involving a substantially similar provision of the Kentucky Constitution; and the doctrine has been reaffirmed by that court in the *Intermountain Cases* (*United States vs. A. T. & S. F. Ry. Co.*), 234 U. S. 476.

These defenses are therefore not founded in substance.

(3) The fourth defense sets up that the rates obtaining prior to October 10, 1911, when the Constitutional provision was amended, were authorized by the Commission and could not be deviated from by the carrier without subjecting it to severe penalties as provided in Section 22 of the same article of the Constitution.

But the answer to this is that until the amendment of October 10, 1911, empowering the Commission to relieve carriers in special instances from the effects of the long and short haul clause the prohibition was

absolute and as obligatory upon the Commission as upon the carrier. Before that amendment the Commission was as powerless to fix rates in contravention of the prohibition as the carrier was to charge them; and if it assumed to do so its act was simply void and not only cast no obligation upon the carrier to obey its order but afforded no protection for such obedience. There is nothing of substance in the claim that Section 22, [152] when construed *in pari materia* with Section 21, is a limitation upon the latter or in any respect modifies the provisions of the clause in question. Obviously the rates which the Commission is empowered to fix under Section 22 are to be fixed in subordination to the prohibition found in Section 21, and it is only rates so fixed that are to be "deemed conclusively just and reasonable," either as an obligation upon or protection to the carrier. Any other interpretation of the sections would be in violation of cardinal rules of construction. This defense is therefore not well taken.

The considerations affecting the fourth defense obtain as to the material substance of the eighth and tenth defenses, which proceed upon cognate lines and therefore do not call for special notice.

(4) So far as the fifth, eleventh, twelfth and thirteenth defenses are concerned, the defendant has made no particular effort to sustain their materiality as against the objections raised by the demurrer. They need not be specifically mentioned, but it is enough to say that none of them contain any matter tending to constitute a substantive defense which is not covered by the denials of the answer.

(5) As to the seventh special defense, it sets up facts which it is conceded by plaintiff, if found to be true, would constitute a valid defense to the causes of action based upon shipment moving after October 10, 1911. [153]

It results that as to the several special defenses other than the seventh the demurrers must be sustained; as to the latter, it should be overruled. Such will be the order.

[Endorsed]: Filed Feby. 24, 1915. Walter B. Maling, Clerk. [154]

In the District Court of the United States, for the Northern District of California, Second Division.

No. 15,638.

Before Hon. WM. C. VAN FLEET, Judge.

CALIFORNIA ADJUSTMENT COMPANY, ...
Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY,
Defendant.

Bill of Exceptions.

BE IT REMEMBERED, that on May 5, 1915, the above-entitled cause came on for hearing before Hon. WM. C. VAN FLEET, Judge of said court, a jury having been duly waived by both parties. The plaintiff appeared by Alfred J. Harwood, Esq., one of its counsel, and the defendant appeared by Henley C. Booth, Esq., one of its counsel; whereupon the following proceedings were had:

Mr. HARWOOD.—This is a complaint to recover overcharges based upon a violation of the long and short haul clause of the Constitution of California. Causes of action 1 to 85 inclusive arise under the Constitution of 1879, before the amendment of October 10, 1911, the amendment which allowed the Railroad Commission to grant relief from the operation of the prohibition.

The COURT.—Under special circumstances.

Mr. HARWOOD.—Under special circumstances. Causes of action 86 to 120 arise under the amendment to the Constitution allowing the Railroad Commission to grant relief in special cases after investigation was had; so the complaint may be divided [155] into these two clauses. The answer of the defendant does admit all of the material allegations of the complaint that the shipments were made, that the charges were in violation of the Constitution, and it set up 13 separate defenses. A demurrer was interposed, and your Honor sustained the demurrer to all the separate defenses except one, and in that case the plaintiff conceded that the demurrer should be overruled. That separate defense as to the cause of action arising after the amendment to the Constitution, and, as I understand it, that is the only issue which is now before the Court. That the Railroad Commission granted permission to the defendant to charge more for the shorter distance after the amendment to the Constitution of October 10, 1911, is the only special defense to which the demurrer was overruled, and that, as I see it, is the only issue before the Court at the present time. This stipula-

tion which has been introduced in evidence will relate, I think, entirely to that particular special defense. Although in a sense the answer attempts to deny the allegations of the complaint, yet as a matter of fact it does not; and the allegations of the complaint that the shipments were made, that there were greater charges for the shorter haul than made for the longer distance, and that payments were involuntary, that is, they were made under such circumstances that they were not voluntary payments in contemplation of law, are all admitted by the pleadings. The only matter now before the Court for determination is as to whether or not the defendant can sustain its seventh defense, and that is, that the Railroad Commission, after the amendment to the Constitution, granted relief. Of course that would apply only to the causes of action from 86 on—86 to 120. There is no defense at all alleged bearing upon the first 85 causes of action.

Mr. BOOTH.—Do I understand that the counsel has closed [156*—2†] his case?

Mr. HARDWOOD.—Yes.

Thereupon counsel for defendant presented to the Court and filed with the Court a written motion for nonsuit, which said motion was in words and figures as follows: [157—3]

†Original Page-number of Opinion as appears in Original Certified Transcript of Record.

*Page-number appearing at foot of page of certified transcript of Record.

Exhibit No. 1.

*In the District Court of the United States, in and for
the Northern District of California.*

No. 15,638.

CALIFORNIA ADJUSTMENT COMPANY, a
Corporation,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Defendant.

Motion for Nonsuit.

Now comes the defendant above named, and after the close of said plaintiff's case, and before submitting evidence on the denials and affirmative defenses raised by defendant's answer, moves the above-entitled court for a judgment of nonsuit herein, on the following grounds:

First. That it does not appear from the evidence introduced by the plaintiff, taken in connection with the settled admissions made by the pleadings, that the charges collected by defendant and specified in paragraph 4 of each of the separately stated causes of action, and therein called excessive charges, exceeded by any sum whatever the charge then made by defendant for the transportation in the same direction of the same amount and class of property, from the point of shipment described in said paragraph 4 to the more distant point from the point

of delivery described in said paragraph 4 of each of said separately stated causes of action.

Second. That it does not appear from the evidence introduced on plaintiff's case, taken in connection with the admissions made [158—4] by defendant's pleadings, that defendant has never been in any case authorized by the Railroad Commission of the State of California to charge less for longer than for shorter distances for the transportation of property; and it does not appear from said evidence, taken in connection with said admissions, that the defendant was not, with respect to all and each of plaintiff's separately stated causes of action, authorized by the Railroad Commission of the State of California to charge less for the longer distance than for the shorter distance for which the respective charges paid by plaintiff's assignor herein were made.

Third. That it does not appear from the evidence introduced on behalf of plaintiff, taken in connection with the admissions made by defendant's pleadings, that said Railroad Commission of the State of California has never prescribed that defendant might in any case, or in any of the cases referred to in plaintiff's separately stated causes of action, be relieved from the prohibition of the Constitution of the State of California directed against charging less for the longer than for the shorter haul.

Fourth. That it affirmatively appears from plaintiff's evidence, taken in connection with the admissions made by defendant's pleadings, that plaintiff's assignors and each of them paid the amounts alleged

to have been collected by defendant, voluntarily and without protest.

Fifth. That the plaintiff has failed to show that it, or any one or more of its assignors, suffered pecuniary loss or damage by or as a direct result of any of the matters, facts, or things pleaded in plaintiff's separately stated causes of action.

Dated this 5th day of May, 1915.

(Signed) GEORGE D. SQUIRES,

(Signed) HENLEY C. BOOTH,

Attorneys for Defendant. [159—5]

After argument the Court denied said defendant's motion for nonsuit; whereupon and to which denial said defendant duly excepted.

(Exception No. 1.)

The defendant then opened its case.

[Testimony of E. J. Reinhart, for Defendant.]

E. J. REINHART was called as a witness for defendant, and being first duly sworn, testified as follows:

The WITNESS.—I reside in Burlingame, California, and am personal clerk to the auditor of freight accounts of defendant. The auditor of freight accounts has direct supervision of the checking of overcharges and undercharges arising under freight tariffs. The office has a complete file of the freight tariffs of the defendant so far as this case is concerned. I personally checked a corrected copy of the original complaint in this action with the original freight bills issued by defendant and in the possession of the plaintiff. The check was made for the

purpose of ascertaining on what basis the charges complained of here were made, and also to ascertain on what basis the charges would have been made if the through rate contended for by plaintiff had been applied. The result of that computation was checked with the printed tariffs on file with the Railroad Commission of the State of California, and all of the tariffs used in this check are on file with said Railroad Commission.

(Witness shown a table of calculations.)

WITNESS.—(Continuing.) This table was prepared by me, and shows all of the freight movements sued on in this action. Under column 1 it shows the date of the waybill; under column 2, the number of the waybill. The freight bills were in the possession of plaintiff, but were checked against the waybills in our possession, and the plaintiff now holds the freight bills. Columns 3, 4 and 5 show respectively the points of origin, the points of destination, and the commodity moved. Column No. 6 [160—6] shows the weight of the shipments. Column No. 7 shows the rate in cents collected by the defendant per hundred pounds. Column No. 8 shows the total charges collected. Column No. 9 shows the rate effective if the tariff in Column No. 10 should have been used. Column No. 10 shows the California Railroad Commission number of the Southern Pacific tariff on which the charges actually collected were based. Each tariff filed with the Commission has two numbers—the Southern Pacific number and the Commission's number, but no two tariffs have the same Southern Pacific number or the same Commission

(Testimony of E. J. Reinhart.)

number. Column No. 11 shows the through rate for the same movement and same commodity between San Francisco and Los Angeles, and Los Angeles and San Francisco, respectively; and Column No. 12 shows the total charges that would have been collected if the through rate had been observed. Column No. 13 shows the dates when the tariffs became effective according to their terms. The word "effective" is not used in the sense that I am testifying that those were the legal rates. Column 14 shows the reference by tariff number to the tariffs which would have been used in assessing the charges shown in Column 12. Column 15 shows the difference between the charges collected and the charges which would have been collected if the through tariff had been observed. The charges in all of these instances that were collected were in excess of those that would have been collected had the through rate been charged.

The third page of this tabulation contains a recapitulation showing the charges collected to have been \$10,089.64, and the charges which would have been collected if the through rate had been observed, to be \$6,973.49.

The tabulation shown witness Reinhart was thereupon offered in evidence by the defendant, and was objected to by plaintiff's counsel on the ground that it was irrelevant and immaterial, plaintiff's counsel waiving the objection that it was [161—7] not the best evidence, but reserving the objection that it was irrelevant and immaterial. Thereupon, after discussion, it was stipulated by plaintiff's counsel that

(Testimony of E. J. Reinhart.)

the tariff numbers in the tabulation show the tariffs under which the defendant claimed the right to make the charges contained therein, and that the tariff numbers in column 14 are the tariffs which contain the lesser charge for the longer distance referred to in the complaint, reserving the objection; and plaintiff further admitted that the charges collected by the defendant were made by the defendant upon the basis stated in the tariffs in column 10, and admitted that the lesser rates for the longer distances stated in the various causes of action and in the complaint are based upon the tariffs mentioned in column 14.

Whereupon the following statements were made:

Mr. BOOTH.—That is practically satisfactory. This will be Defendant's Exhibit "A."

Mr. HARWOOD.—If your Honor please, I don't know as to having this as an exhibit; I would like only to have it admitted as to columns 10 and 14, showing the various tariff rates only, and not for any other purpose.

The COURT.—I suppose that is all it can go in for.

Mr. BOOTH.—The rest is merely explanatory and ties it up to the complaint.

Mr. HARWOOD.—I also ask to have stricken out any reference to the causes of action occurring prior to the amendment of the Constitution. This statement covers all the causes of action in the complaint. My admission only goes to those after that.

The COURT.—I understood that to be the limit of your admission. The others are in a different category.

(Testimony of E. J. Reinhart.)

The exhibit was thereupon admitted in evidence as Defendant's Exhibit "A," with the foregoing limitation, [162—8].

Said statement is in words and figures as follows:
[163—9]

STATEMENT SHOWING IN DETAIL ITEMS EMBODIED IN COMPLAINT FILED BY THE CALIFORNIA ADJUSTMENT COMPANY AGAINST THE SOUTHERN PACIFIC COMPANY, U.S. DIST. COURT N. DIST. CALIFORNIA, CASE NO. 15638

Table with 15 columns: Daybill, Date, No., From, To, Commodity, Wt., Specific Rate Collected, Charges Collected, Date Rate Effective If Tariff In Col. 10 Should Have Been Followed, Charges Collected Were Based On Tariff No., Thru Basis S.P. to L.A. or L.A. to S.P., Date Through Rate Effective If Through Tariff Should Have Been Followed, Tariff Reference, Difference Between Specific and Through Charges.

(X) Rate based .06 to Lathrop Sup 1 CRC 84 3-22-10
X 302 Lathrop to Sanger Sup 8 CRC 12 7-15-11
-364
X Case 110

("CRC" means "California Railroad Commission")

| Daybill | | From | To | Commodity | Wt. | Specific Rate Collected | Charge Collected | Date Rate Effective If Through In Col. 10 Should Have Been Followed | Charge Collected Were Based On Tariff No. | Rate S.F. to L.A. or L.A. to S.F. | Charge | Date Through Rate Effective If Through <i>ASAC</i> Should Have Been Followed. | Tariff Reference | Difference Between Specifics and Through Charge |
|----------|-------|---------------|--------------|-----------------|-------|-------------------------|------------------|---|---|-----------------------------------|---------|---|------------------|---|
| 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. | 9. | 10. | 11. | 12. | 13. | 14. | 15. |
| 3-13-11 | 8326 | San Francisco | Mojave | Wine in Glass | 855 | 1.10 | 9.41 | 6-11-09 | CRG 134 | .60 | 5.14 | 10-10-09 | CRG 134 | 4.27 |
| 3-11-11 | 12459 | " | Delano | Sheet Iron | 1805 | .62 | 11.19 | 6-11-09 | CRG 12 | .37 1/2 | 6.77 | 10-10-09 | CRG 134 | 4.42 |
| 5-1-11 | 88 | " | " | " | 2644 | .62 | 16.39 | 6-11-09 | CRG 12 | .37 1/2 | 11.02 | 3-22-11 | CRG 134 | 5.37 |
| 5-15-11 | 18041 | " | " | Pipe | 1700 | .62 | 10.54 | 6-11-09 | CRG 12 | .37 1/2 | 6.38 | 3-22-11 | CRG 134 | 4.16 |
| 5-17-11 | 13218 | Los Angeles | San Luis Ob. | Tank Iron | 87800 | .27 1/2 | 241.45 | 3-22-11 | CRG 134 | .17 1/2 | 153.65 | 1-25-11 | CRG 84 | 87.80 |
| 5-4-11 | 2549 | " | " | " | 97900 | .27 1/2 | 269.23 | 3-22-11 | CRG 134 | .17 1/2 | 171.35 | 1-25-11 | CRG 84 | 97.90 |
| 3-25-11 | 23280 | " | Bakersfield | Working Brls. | 6580 | .58 | 38.16 | 2-15-11 | XCRG 134 | .42 1/2 | 27.42 | 3-22-11 | CRG 134 | 10.68 |
| 5-8-11 | 5136 | " | San Luis Ob. | Tank Iron | 17400 | .27 1/2 | 212.85 | 3-22-11 | CRG 134 | .17 1/2 | 135.45 | 1-25-11 | CRG 134 | 77.40 |
| 2-13-11 | 9540 | " | Emater | St.Riv.Pipe | 20000 | .56 | 112.00 | 10-10-09 | CRG 134 | .27 1/2 | 55.00 | 10-10-09 | CRG 134 | 57.00 |
| 7-24-11 | 19525 | " | San Luis Ob. | Bar Iron | 36000 | .27 1/2 | 99.00 | 3-22-11 | CRG 134 | .15 | 54.00 | 3-22-10 | CRG 84 | (X) 45.00 |
| 5-12-11 | 9147 | " | Bakersfield | Oil Well Sup. | 36380 | .40 | 145.52 | 2-15-11 | XCRG 134 | .30 | 109.14 | 3-22-11 | CRG 134 | 36.38 |
| 8-18-11 | 14662 | " | " | Boiler Shell | 8250 | .67 | 55.28 | 2-15-11 | XCRG 134 | .60 | 49.51 | 3-22-11 | CRG 134 | 5.77 |
| 8-29-11 | 1014 | Emery | Fresno | Bar Iron | 43062 | .56 | 155.05 | 6-11-09 | CRG 12 | .15 | 64.60 | 3-22-10 | CRG 84 | 90.43 |
| 8-26-11 | 1075 | " | " | " | 38030 | .56 | 136.91 | 6-11-09 | CRG 12 | .15 | 57.05 | 3-22-10 | CRG 84 | 79.86 |
| 2-1-11 | 57 | Los Angeles | Bakersfield | Oil Well Sup. | 41140 | .50 | 205.70 | 10-10-09 | CRG 134 | .30 | 123.42 | 10-10-09 | CRG 134 | 82.28 |
| 5-13-11 | 10308 | " | " | " | 32400 | .40 | 129.60 | 2-15-11 | XCRG 134 | .30 | 97.20 | 2-15-11 | CRG 134 | 32.40 |
| 4-22-11 | 18895 | " | " | Working Brls. | 3940 | .58 | 22.85 | 2-15-11 | XCRG 134 | .42 1/2 | 16.74 | 3-22-11 | CRG 134 | 6.11 |
| 7-27-11 | 23543 | " | " | " | 6720 | .58 | 38.98 | 2-15-11 | XCRG 134 | .42 1/2 | 28.57 | 3-22-11 | CRG 134 | 10.41 |
| 8-10-11 | 5601 | " | " | " | 4920 | .58 | 28.54 | 2-15-11 | XCRG 134 | .42 1/2 | 20.92 | 3-22-11 | CRG 134 | 7.62 |
| 3-24-11 | 20486 | " | " | Sucker Rods | 10550 | .53 | 55.92 | 2-15-11 | XCRG 134 | .37 1/2 | 39.57 | 3-22-11 | CRG 134 | 16.35 |
| 3-24-11 | 22188 | " | " | Pig Iron | 5535 | .58 | 32.10 | 2-15-11 | XCRG 134 | .42 1/2 | 23.52 | 3-22-11 | CRG 134 | 8.58 |
| 7-25-11 | 28436 | San Francisco | " | Beer | 24700 | .37 1/2 | 92.63 | 3-22-10 | CRG 84 | .25 | 61.76 | 3-22-10 | CRG 84 | 30.87 |
| 7-12-11 | 13169 | " | " | " | 24700 | .37 1/2 | 92.63 | 3-22-10 | CRG 84 | .25 | 61.76 | 3-22-10 | CRG 84 | 30.87 |
| 6-12-11 | 14480 | " | " | " | 24600 | .37 1/2 | 92.25 | 3-22-10 | CRG 84 | .25 | 61.60 | 3-22-10 | CRG 84 | 30.65 |
| 6-3-11 | 3914 | " | " | " | 24700 | .37 1/2 | 92.63 | 3-22-10 | CRG 84 | .25 | 61.76 | 3-22-10 | CRG 84 | 30.87 |
| 6-7-11 | 8270 | " | " | " | 24500 | .37 1/2 | 91.88 | 3-22-10 | CRG 84 | .25 | 61.26 | 3-22-10 | CRG 84 | 30.62 |
| 6-26-11 | 25253 | " | " | " | 25140 | .37 1/2 | 94.28 | 3-22-10 | CRG 84 | .25 | 62.66 | 3-22-10 | CRG 84 | 31.62 |
| 5-9-11 | 10763 | " | " | " | 24500 | .37 1/2 | 91.88 | 3-22-10 | CRG 84 | .25 | 61.26 | 3-22-10 | CRG 84 | 30.62 |
| 4-29-11 | 35250 | " | " | " | 24700 | .37 1/2 | 92.63 | 3-22-10 | CRG 84 | .25 | 61.76 | 3-22-10 | CRG 84 | 30.87 |
| 6-28-11 | 35827 | " | " | " | 24900 | .37 1/2 | 93.37 | 3-22-10 | CRG 84 | .25 | 62.24 | 3-22-10 | CRG 84 | 31.13 |
| 6-24-11 | 31636 | " | " | " | 24800 | .37 1/2 | 93.00 | 3-22-10 | CRG 84 | .25 | 62.00 | 3-22-10 | CRG 84 | 31.00 |
| 6-19-11 | 23737 | " | " | " | 24500 | .37 1/2 | 91.88 | 3-22-10 | CRG 84 | .25 | 61.26 | 3-22-10 | CRG 84 | 30.62 |
| 2-16-12 | 10991 | Los Angeles | " | Sucker & Fitts. | 10785 | .53 | 57.16 | 2-15-11 | XCRG 134 | .37 1/2 | 40.44 | 3-22-11 | CRG 134 | 16.72 |
| 11-11-11 | 8182 | " | " | Oil Well Sup. | 37380 | .40 | 149.52 | 2-15-11 | XCRG 134 | .30 | 112.14 | 3-22-11 | CRG 134 | 37.38 |
| 11-4-11 | 2666 | " | Emater | Tank Iron | 13550 | .57 | 77.24 | 2-15-11 | XCRG 134 | .37 1/2 | 50.82 | 3-22-11 | CRG 134 | 26.42 |
| 3-3-12 | 2242 | San Francisco | Delano | Sheet Iron | 1830 | .62 | 11.35 | 6-11-09 | CRG 12 | .37 1/2 | 6.87 | 3-22-11 | CRG 134 | 4.48 |
| 3-3-12 | 10298 | " | " | Iron & Fitts. | 2423 | .62 | 15.02 | 6-11-09 | CRG 12 | .37 1/2 | 9.09 | 3-22-11 | CRG 134 | 5.93 |
| 4-15-12 | 20655 | " | " | Iron | 2080 | .62 | 12.90 | 6-11-09 | CRG 12 | .37 1/2 | 7.81 | 3-22-11 | CRG 134 | 5.09 |
| 1-29-12 | 32912 | " | Mojave | Beer | 24000 | .37 1/2 | 90.00 | 3-22-10 | CRG 84 | .25 | 60.00 | 3-22-10 | CRG 84 | 30.00 |
| 4-30-12 | 25000 | " | " | " | 25000 | .37 1/2 | 93.75 | 3-22-10 | CRG 84 | .25 | 62.50 | 3-22-10 | CRG 84 | 31.25 |
| 12-23-11 | 31017 | " | " | Whiskey | 1000 | 1.03 | 10.30 | 6-11-09 | CRG 134 | .48 1/2 | 4.80 | 3-22-11 | CRG 134 | 5.50 |
| 11-4-11 | 3645 | " | " | Beer | 24350 | .37 1/2 | 91.31 | 3-22-10 | CRG 84 | .25 | 60.87 | 3-22-10 | CRG 84 | 30.44 |
| 6-4-12 | 3900 | " | " | " | 29720 | .37 1/2 | 111.45 | 3-22-10 | CRG 84 | .25 | 74.37 | 3-22-10 | CRG 84 | 37.15 |
| 2-29-12 | 35003 | " | " | " | 24400 | .37 1/2 | 91.50 | 3-22-10 | CRG 84 | .25 | 61.00 | 3-22-10 | CRG 84 | 30.50 |
| 12-8-11 | 4353 | Los Angeles | Tehachamp | Refined Oil | 2892 | .58 | 16.54 | 2-15-11 | XCRG 134 | .42 1/2 | 12.12 | 3-22-11 | CRG 134 | 4.42 |
| 12-1-11 | 99 | " | Fresno | Paper | 40000 | .52 | 208.00 | 2-15-11 | XCRG 134 | .27 1/2 | 110.00 | 3-22-11 | CRG 134 | 98.00 |
| 6-11-12 | 5300 | " | " | Roofing | 36770 | .43 | 158.11 | 5-27-12 | CRG 1515 | .27 1/2 | 101.12 | 5-27-12 | CRG 1515 | 56.99 |
| 6-3-12 | 228 | " | " | Bees Wax | 4150 | .79 | 32.79 | 2-15-11 | XCRG 134 | .60 | 24.97 | 3-22-11 | CRG 134 | 7.88 |
| 2-19-12 | 12841 | " | " | Boiler over | 3095 | .79 | 24.45 | 2-15-11 | XCRG 134 | .57 | 18.57 | 3-22-11 | CRG 134 | 5.88 |
| TOTAL | | | | | | | 4297.10 | | | | 2153.14 | | | 1543.96 |

(X) Complaint shows through rate 25% Difference \$9.00

| Receipts | | | | Specific | | Date Paid Ef- | | Through Col- | | Total Paid | | Date Through | | Difference Be- | |
|----------|-------|---------------|--------|-----------------|-------|---------------|---|-----------------------|------------|------------|---------|----------------|---------|----------------|---------|
| Date | No. | From | To | Quantity | Rate | Charges | Effective If | lected Were | lected | Rate | Charges | Rate Effective | Through | Through | Through |
| 1. | 2. | 3. | 4. | 5. | 6. | 7. | Tariff In Col- 10 Should Have Been Followed | Should Be Followed | Tariff No. | 11. | 12. | 13. | 14. | 15. | 16. |
| 2-10-12 | 104 | Paraffin | Fresno | Roofing | 31050 | .36 | 6-11-09 | | CRC 12 | .27 1/2 | 85.39 | 3-22-11 | CRC 134 | 26.39 | |
| 4-25-12 | 26 | Livny | Sanger | Sulphur | 39680 | .21 1/2 | 6-11-09 | | CRC 12 | .15 | 59.52 | 11-28-10 | CRC 84 | 24.80 | |
| 10-16-11 | 2718 | Paraffin | Fresno | Roofing | 38749 | .36 | 6-11-09 | | CRC 12 | .27 1/2 | 106.50 | 3-22-11 | CRC 134 | 32.94 | |
| 11-10-11 | 3072 | " | " | " | 30421 | .36 | 6-11-09 | | CRC 12 | .27 1/2 | 83.69 | 3-22-11 | CRC 134 | 25.80 | |
| 7-15-12 | 162 | " | " | " | 30192 | .36 | 6-11-09 | | CRC 12 | .27 1/2 | 82.78 | 3-22-11 | CRC 134 | 25.59 | |
| 1-10-12 | 73 | " | " | " | 30012 | .36 | 6-11-09 | | CRC 12 | .27 1/2 | 82.57 | 3-22-11 | CRC 134 | 25.51 | |
| 7-25-12 | 40 | Lealia | Sanger | Salt | 32465 | .18 1/2 | 6-11-09 | | CRC 12 | .15 | 48.54 | 11-28-10 | CRC 84 | 11.36 | |
| 12-8-11 | 9134 | San Francisco | Sanger | Fencing | 7605 | .49 | 6-11-09 | | CRC 12 | .42 1/2 | 32.32 | 3-22-11 | CRC 134 | 4.94 | |
| 10-20-11 | 21814 | " | " | Dwain | 4000 | .49 | 6-11-09 | | CRC 17 | .42 1/2 | 34.00 | 3-22-11 | CRC 134 | 5.20 | |
| 12-21-11 | 2175 | " | Fresno | Rice | 40000 | .36 | 6-11-09 | | CRC 12 | .27 1/2 | 110.00 | 3-22-11 | CRC 134 | 34.00 | |
| 12-9-12 | 712 | " | " | " | 40000 | .36 | 6-11-09 | | CRC 12 | .27 1/2 | 110.00 | 3-22-11 | CRC 134 | 34.00 | |
| 1-10-11 | 132 | " | " | " | 40000 | .36 | 6-11-09 | | CRC 12 | .27 1/2 | 110.00 | 3-22-11 | CRC 134 | 34.00 | |
| 5-4-12 | 423 | " | " | " | 40000 | .36 | 6-11-09 | | CRC 12 | .27 1/2 | 110.00 | 3-22-11 | CRC 134 | 34.00 | |
| 1-17-12 | 1770 | " | " | " | 40000 | .36 | 6-11-09 | | CRC 12 | .27 1/2 | 110.00 | 3-22-11 | CRC 134 | 34.00 | |
| 11-4-11 | 1096 | " | " | Metal Lath | 11680 | .47 | 6-11-09 | | CRC 12 | .42 1/2 | 49.64 | 3-22-11 | CRC 134 | 5.26 | |
| 3-22-12 | 29559 | " | " | St.Pal. & Bush. | 24000 | .33 1/2 | 6-11-09 | | CRC 12 | .30 | 72.00 | 3-22-11 | CRC 134 | 8.40 | |
| 3-6-12 | 513 | " | " | Rice | 40000 | .36 | 6-11-09 | | CRC 12 | .27 1/2 | 110.00 | 3-22-11 | CRC 134 | 34.00 | |
| 9-29-11 | 1837 | " | " | " | 40000 | .36 | 6-11-09 | | CRC 12 | .27 1/2 | 110.00 | 3-22-11 | CRC 134 | 34.00 | |
| TOTAL | | | | | | | | 1941.30 | | | 1507.05 | | | 434.25 | |

R E S T R I C T I O N

| | | | |
|--------|----------|---------|---------|
| Page 1 | 1951.24 | 2715.90 | 1127.94 |
| " 2 | 4297.10 | 2753.14 | 1543.96 |
| " 3 | 1941.30 | 1507.05 | 434.25 |
| TOTAL | 10089.64 | 6973.49 | 3116.15 |

(Testimony of E. J. Reinhart.)

WITNESS.—(Continuing.) By the note under column 10, "X case 110," I mean that that refers to the California Railroad Commission's Case Number 110.

Mr. BOOTH.—I have a certified copy of the order here, which I will offer now.

Mr. HARWOOD.—What is the purpose of offering that in evidence, Mr. Booth?

Mr. BOOTH.—The purpose of offering this in evidence is to connect up the rates established by the Commission with the orders of the Commission made after October 10, 1911, which we claim had the effect of allowing the railroads to continue charging the greater rates for the lesser distance. It is offered in connection with our special defense No. 7.

Mr. HARWOOD.—That brings up this very point as to whether or not the Railroad Commission had any authority to permit carriers to charge a greater sum for the shorter distance without an investigation by the Railroad Commission. I think, if your Honor please, that that matter was fully discussed in the briefs in this case, and I am of the opinion that your Honor in your opinion passed upon that matter, and that your Honor was of the opinion that the defendant in this case had no defense unless it could show that the Railroad Commission did grant relief. Now this offer does not purport to show that the Railroad Commission granted relief—merely that they gave temporary protection pending the investigation. It is clear under the California Constitution that the Railroad Commission had no power to make such order—

(Testimony of E. J. Reinhart.)

Mr. BOOTH.—I do not think counsel understands what I am offering.

Mr. HARWOOD.—What are you offering?

Mr. BOOTH.—I am offering now a certified copy of an order and decision of the Railroad Commission of the State of California, [167—13] in Case No. 110, entitled “Associated Jobbers of Los Angeles, Complainant, vs. Southern Pacific Company, a Corporation, and Atchison, Topeka & Santa Fe Railway Company, a Corporation, Defendants; Jobbers & Manufacturers’ Association of Stockton and Traffic Bureau of the Merchants’ Exchange of San Francisco, Interveners.”

The COURT.—What is that order?

Mr. BOOTH.—It is an order fixing certain rates for San Joaquin Valley. It is the order referred to under column 10 of Exhibit “A” as Case No. 110.

Mr. HARWOOD.—What is the date of the order, Mr. Booth?

Mr. BOOTH.—December 20, 1910.

Mr. HARWOOD.—This order was before the amendment to the Constitution, and clearly can have no relevancy in this case. If counsel were offering an order made after the amendment to the Constitution which granted relief, that would be different. Here is an order made before the Constitution was amended.

The COURT.—Upon what theory do you offer that? That thereafter notwithstanding they had no power to modify this long and short haul rate prior to the amendment to the Constitution, that after the

amendment became effective this order would become effective?

Mr. BOOTH.—I am offering it on two theories, if your Honor please; first, on the theory that by the amendment to the Constitution of October 10, 1911—

The COURT.—That was a year after this order.

Mr. BOOTH.—Yes—the existing rates, whatever they were, were preserved in effect, and second, on the theory that the chain of orders which I will offer later, made by the Railroad Commission after October 10, 1911, referred to and by necessary implication made this establishment of rates a part of these orders. [168—14]

Mr. HARWOOD.—If your Honor please, the amendment to the Constitution, which is referred to in the Eshleman Act, if it made any rates legal at all after the Constitution went into effect, made only those legal under the old Constitution, and these rates were illegal under the old Constitution, and therefore the amendment to the Constitution did not legalize anything that was theretofore illegal.

The Court thereupon sustained plaintiff's objection, to which defendant excepted.

(Exception No. 3.)

Said order is in words and figures as follows
[169—15]

BEFORE THE RAILROAD COMMISSION
of the

STATE OF CALIFORNIA.

Case No. 110.

ASSOCIATED JOBBERS OF LOS ANGELES,
Complainant,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
and ATCHISON, TOPEKA AND SANTA
FE RAILWAY COMPANY, a Corporation,
Defendants,JOBBER AND MANUFACTURERS' ASSOCIA-
TION OF STOCKTON AND TRAFFIC
BUREAU OF THE MERCHANTS' EX-
CHANGE OF SAN FRANCISCO,

Intervenors.

Submitted September 1, 1910.

Decided December 20, 1910.

Messrs. KUSTER, LOEB and LOEB, for Com-
plainant.WM. F. HERRIN and C. W. DURBROW, for
Defendant Southern Pacific Company.E. W. CAMP and U. T. CLOTFELTER, for De-
fendant Atchison, Topeka and Santa Fe
Railway Company.C. L. NEUMILLER, for Jobbers and Manufac-
turers' Association of Stockton.WM. R. WHEELER and SETH MANN, for
Traffic Bureau of the Merchants' Exchange.

REPORT AND OPINION OF THE COMMISSION.

The complainant complains that the rate of freight

governed by class rates, ranging from first class to Class E of current tariffs, and upon the commodity of beer in carload lots from [170—16] Los Angeles to the following points or stations in the San Joaquin Valley:

| | | |
|----------|---------|-------------|
| Coalinga | Olig | Porterville |
| Goshen | Fresno | Bakersfield |
| Tulare | Hanford | McKittrick |
| Oil City | Exeter | Visalia |

and all intermediate points therewith, are both unreasonable and discriminatory.

The unreasonableness appears to be measured by rates applying from San Francisco to equi distance points with the points or stations complained of, as well as by comparison with rates applying for equal mileages between other points similarly situated.

The second count, discrimination, is based upon defendants' rates from San Francisco; the complainant contending that her merchants are unable to meet San Francisco at or near the halfway point between the two cities by reason of discriminatory rates which give undue preference and advantage to San Francisco.

The Traffic Bureau of the Merchants' Exchange of San Francisco intervenes upon the second count, and contends that complainants are not discriminated against, but, considering physical conditions, rates are in favor of complainant and to the prejudice of San Francisco.

The Jobbers and Manufacturers' Association of Stockton intervenes and asks consideration in any adjustment that may be made, but particularly

differentials existing between San Francisco and Stockton and the points complained of, and that Stockton be given the full benefit of the local rates between San Francisco and Stockton and rates from Stockton to the points involved, which are as follows:

| In cents per 100 pounds: | | | | |
|--------------------------|-----|-----|-----|-----|
| 1 | 2 | 3 | 4 | 5 |
| .10 | .10 | .09 | .09 | .07 |

and other class rates, as shown by current tariffs. Short line [171—17] distance from San Francisco to Stockton appears to be seventy-eight (78) miles, and in considering established class rates as above for a distance of seventy-eight (78) miles they can at least be considered unreasonably low as compared with other cities; for instance, from Stockton to a point seventy-eight (78) miles south, Los Banos, the rates are

| In cents per 100 pounds. | | | | | | | | | |
|--------------------------|-----|-----|-----|-----|-----|-----|------|-----|------|
| 1 | 2 | 3 | 4 | 5 | A | B | C | D | E |
| .45 | .41 | .39 | .35 | .30 | .30 | .17 | .15½ | .12 | .11¼ |

and are certainly forced rates brought by keen water competition, as originally we find that the rates between San Francisco and Stockton were much higher.

The differentials that now exist and have existed for a number of years in the past between San Francisco, Stockton and San Joaquin Valley points, are much lower than the forced rates, being as follows:

| In cents per 100 pounds. | | | | |
|--------------------------|-----|-----|-----|-----|
| 1 | 2 | 3 | 4 | 5 |
| .05 | .07 | .07 | .07 | .04 |

and still less on other car-load class rates. The record is not clear as to the reason for the existing

low differential, except that it is to be gathered that they were made lower than the forced local rates in order to prevent water carriers operating between San Francisco and Stockton in participating in freight traffic between San Francisco and points in the San Joaquin Valley south of Stockton in connection with rail carriers Stockton south. But it is apparent that such danger does not exist to-day, and while it is the custom for reasonable differentials to exist between commercial cities, it is fair to say that such low existing differentials would not have existed were it not for the reason of the low forced water competitive class rates. Stockton merchants should have the full benefit of a forced rate condition between [172—18] San Francisco and Stockton as well as San Francisco merchants, and the Stockton rates to the points complained of herein should be lower to the extent of the existing class rates between San Francisco and Stockton. Stockton merchants complain also that Sacramento merchants have an advantage in differentials to points in the San Joaquin Valley. We find that Sacramento, like Stockton, enjoys water competitive rates, and the distance by water and water service between San Francisco and Sacramento and Stockton are on a fair parity; however, the adjustment outlined herein as between San Francisco and Stockton to points in controversy will raise the now existing discrimination between Sacramento and Stockton and the points complained of.

We now come to the contention of the merchants of Los Angeles. Class rates from San Francisco to

Berenda, a point one hundred and sixty-eight (168) miles from San Francisco, are as follows:

| In cents per 100 pounds. | | | | | | | | | |
|--------------------------|-----|-----|-----|------|------|------|------|------|-----|
| 1 | 2 | 3 | 4 | 5 | A | B | C | D | E |
| .47 | .42 | .38 | .35 | .29½ | .27½ | .19½ | .17½ | .15½ | .13 |

Class rates from Los Angeles to Bakersfield, a point equal distant from Los Angeles (168 miles), are as follows:

| In cents per 100 pounds. | | | | | | | | | |
|--------------------------|-----|-----|-----|-----|-----|------|------|------|------|
| 1 | 2 | 3 | 4 | 5 | A | B | C | D | E |
| .71 | .68 | .64 | .61 | .48 | .50 | .30¾ | .27½ | .22½ | .22½ |

The percentages in favor of the former range from 51 per cent first class to 73 per cent Class E, and while the rates from San Francisco to Berenda are much lower than the rates from Los Angeles to Bakersfield, the former may be considered to some extent forced rates, and taking into consideration all the conditions surrounding the compelling features of the former rates, we are of opinion that the present rate from Los Angeles to Bakersfield and other points north thereof in the San Joaquin Valley, mentioned [173—19] herein, are excessive. This opinion is further corroborated by the fact that the defendants themselves so considered them in contemplating an adjustment of rates to and from the points in controversy, and were only prevented from making their rates effective upon that occasion by objection on the part of the San Francisco merchants.

The San Francisco intervenors made much of the increased cost of operation over the grades, particularly Tehachapi grade from Los Angeles to Bakersfield. In the question of the cost of operation, while a great mass of evidence was submitted, it was

shown that the Tehachapi line was operated jointly by the Santa Fe and the Southern Pacific, thus reducing the cost to each line. Commissioner Lane of the Interstate Commerce Commission, in Case No. 2839, involving rates between Sacramento, Reno and Lovelock, expressed our views very aptly. He says: "We do not recognize the right of a carrier to single out a piece of expensive road and make the local traffic thereon bear an undue portion of the expense of its maintenance or of its construction. A road is built and operated as a whole, and local rates are not to be made with respect to the difficulties of each particular portion, charging the cost of a bridge to the traffic of one section or the cost of a tunnel to traffic between its two mouths. * * * If the position of the defendant were followed by the carriers generally it would result in rates that would vary from mile to mile as the cost of road per mile varies." And, consequently, we give no important consideration to either the cost of operating the terminals of San Francisco upon which so much stress was laid, including the bay and Dumbarton cut-off, or the grades between Los Angeles and Bakersfield, except that one in a measure offsets the other.

In reaching our conclusions we are cognizant of the fact that the Santa Fe line from Los Angeles to the San Joaquin Valley is of greater length than its competitor, but we have considered [174—20] the request of the Santa Fe that it be considered upon the same mileage as the Southern Pacific. San Joaquin Valley is a very rich territory and is growing

rapidly, and Los Angeles, San Francisco, and Stockton must be considered not only as sources of supply for the Valley, but as markets for its products as well.

IT IS HEREBY ORDERED, that the defendants make effective, not later than February 15, 1911, tariffs in keeping with this opinion, fixing class rates from Los Angeles to Bakersfield, as follows:

| | | In cents per 100 pounds. | | | | | | | | | |
|------------------|--|--------------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| And from Los An- | | | | | | | | | | | |
| geles to Visalia | | .71 | .66 | .61 | .57 | .47 | .44 | .30 | .26 | .22 | .19 |
| | | 1 | 2 | 3 | 4 | 5 | A | B | C | D | E |
| | | .67 | .62 | .58 | .53 | .44 | .40 | .27 | .24 | .21 | .17 |
| And from Los An- | | | | | | | | | | | |
| geles to Fresno | | .79 | .74 | .68 | .63 | .52 | .48 | .33 | .29 | .25 | .21 |

graduating the rates between the above points. Rates from Los Angeles, San Francisco, and Stockton to points on branch lines which leave the main lines between Kern Junction, Bakersfield, and south of Fresno, shall be fixed in the same manner, i. e., if the rates from San Francisco to a branch line point is ten cents higher than to the main line junction point then the rate from Los Angeles and Stockton shall also be ten cents higher than the junction or main line point. From Stockton south the defendants reduce their rates so as to give Stockton the benefit of a differential under San Francisco equal to the existing class rates from San Francisco to Stockton upon all classes to all points involved. The commodity rate complained of was beer. Without giving definite figures the carriers will arrange their tariffs in such a manner as to eliminate the present discrimination, using as a basis the adjust-

ment outlined for class rates.

(Signed) A. C. IDWIN,
Commissioner.

THEODORE SUMMERLAND,
Commissioner.

Attest: W. D. WAGNER,
Secretary. [175—21]

[Testimony of F. W. Gompf, for Defendant.]

F. W. GOMPH, being first duly sworn as a witness for the defendant, testified as follows:

The WITNESS.—I am agent of the Pacific Freight Tariff Bureau. During May, 1909, I was in charge of the tariff department of the Southern Pacific Company.

Mr. BOOTH.—During that month state what you did with regard to the tariffs of the Southern Pacific Company applicable to local freight movements in California, so far as the California Railroad Commission was concerned.

Mr. HARWOOD.—That is objected to upon the same grounds as the objection to the order—immaterial, irrelevant and incompetent.

The COURT.—What was the month?

Mr. BOOTH.—May, 1909.

The COURT.—What is the purpose of it?

Mr. BOOTH.—The purpose of this, if your Honor please, is to show that in May, 1909, on the request, or rather on the order, of the Commission, the Southern Pacific Company filed with the Commission all of its printed tariffs, including certain of the tariffs shown in "Exhibit A" introduced in this case. I

(Testimony of F. W. Gomp.)

propose to follow this up by showing that thereafter the Railroad Commission, by an order, a certified copy of which I have here, approved and adopted those tariffs as the moving rates therein specified; and the pertinency of that is to connect it up with the order that the Commission made after the amendment of October 10, 1911, continuing existing rates in force until the Commission could determine the question of violation of the long and short haul clause.

Mr. HARWOOD.—It seems to me that this matter is all covered by the special defense to which the demurrer was sustained, and that it is not necessary for counsel to go into the matter again. [176—22]

The COURT.—I do not remember the full scope of the decision on the demurrer. What was it?

Mr. BOOTH.—The decision, I believe, was to the effect that before October 10, 1911, the Railroad Commission had no power to make rates.

The COURT.—I remember that.

Mr. BOOTH.—But you overruled the demurrer to the seventh special defense, to the effect that after October 10, 1911, they had the power and had exercised the power to relieve. We want to show what they relieved from, and we cannot show it without showing the rates that were then in force.

The COURT.—I do not see anything in the memorandum opinion expressly covering the suggestion you make, Mr. Harwood.

Mr. HARWOOD.—The only purpose of offering evidence as to what tariffs were approved by the

(Testimony of F. W. Gomph.)

Commission prior to the amendment to the Constitution of October 10, 1911, would be to show that the rates specified in this were legal rates, which they could not be under your Honor's decision.

The COURT.—I do not understand that to be the purpose of the present offer. The proposition is to follow this offer up with a showing that after the amendment of October 10, 1911, the State Board, referring to the rates fixed by this order, made an order continuing them in force until it could have an opportunity to make an investigation as to the propriety of these rates. Is that not it?

Mr. BOOTH.—Yes. I will say in fairness to the Court, it may be a matter of argument whether their resolution had that effect; but I think we are entitled to show, and we cannot show all at once just what they tried to do.

The COURT.—I think the thing for you to offer first is the order made subsequent to the adoption of the Constitution. We can determine then the scope of that, and if it is admissible [177—23] then you can offer to show what those rates were that were referred to in that order.

Mr. BOOTH.—Then I should like to renew the offer of the order in Case No. 110. I will ask permission to withdraw the witness temporarily while I offer this documentary evidence.

The COURT.—Very well.

Mr. BOOTH.—Now, I should like first to offer a certified copy of an order made by the Railroad Commission of the State of California in its Case No. 214.

(Testimony of F. W. Gomph.)

This order was made October 26, 1911. This case is entitled "In the Matter of the Provisions of Section 21 of Article XII of the Constitution of California, relating to long and short hauls and through rates exceeding aggregate of intermediate rates." I should like to offer that as defendant's exhibit next in order.

Mr. HARWOOD.—You might read it, Mr. Booth.

Mr. BOOTH.—It is quite long. The essential part of it is:

"Now, Therefore, be it ordered that each railroad and other transportation company which has filed with this Commission any schedule containing any rate or fare showing a greater compensation in the aggregate for the transportation of passengers or of like kind of property for a shorter than a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or a greater compensation as a through rate than the aggregate of the intermediate rates, file with the Commission on or before the 2nd day of January, 1912, a complete list of each rate or charge not in conformity with said provisions of the Constitution of this State, unless authorized by this Commission, as shown by its schedules of rates and fares on file with this Commission, showing in each case the name of the commodity or description of the traffic, or the passenger or other service, the point or points of origin and destination, the highest intermediate rate or

fare, with the name of the point (in case of long and short haul), or the different intermediate rates (in case of a greater compensation for a through rate), and the rate or fare to the more distant point.

Be it futher ordered that each of said railroad and other transportation companies present to this Commission on or before said 2nd day of January, 1912, for examination and investigation by this Commission, a new schedule or schedules removing said deviations from the provisions of said section of the Constitution of this State, or in case it is desired to justify the same, or any of them, an application or applications to be relieved from the provisions of said section, said application or applications to be in such of the two following forms as may meet the conditions as to which relief is sought." [178—24]

Then follows a form for the companies to use, and regulations regarding the filing of the forms. The order which I have referred to is that of October 26, 1911.

Mr. HARWOOD.—Objected to on the ground that it is immaterial, irrelevant and incompetent, and not showing any order granting relief.

The COURT.—I do not see the materiality of that, unless you can show me how it is material.

Mr. BOOTH.—It is merely preliminary to offering the whole proceeding in Case 214, including the application for relief in regard to these respective rates.

The COURT.—All we are concerned with here, Mr. Booth, under the issues in this case, is any instances in which the Railroad Commission upon application has made an order authorizing suspension, that is, authorizing a deviation from the provisions of the Constitution in question. That power was given them by the amendment of October 10, 1911. Any instance where they did not authorize it it was just as obligatory upon the carrier as it was before.

Mr. BOOTH.—Your Honor, it is merely preliminary.

The COURT.—What is its materiality, if it is preliminary? Of course I can see it is merely preliminary.

Mr. BOOTH.—It is all part of the same proceeding, and if it develops not to be material it can go out, on a motion to strike out.

The COURT.—If you will offer that which does bear directly upon the subject, and that that shows that this is material, then this case can be admitted, but at the present time I do not see its materiality.

Mr. BOOTH.—I will withdraw that temporarily, and offer the order of November 20, 1911, in the same proceeding, a certified copy of the order, which reads: [179—25]

“Permission is hereby granted to railroads and other transportation companies, until January 2, 1912, to file for establishment with the Commission in the manner prescribed by law and in accordance with the Commission’s regulations, such changes in rates and fares as would occur in the ordinary course of their business,

continuing under the present rate bases or adjustments, higher rates or fares at intermediate points; provided, that in so doing the discrimination against intermediate points is not made greater than that in existence October 10, 1911, except when a longer line or route desires to reduce rates or fares to the more distant point for the purpose of meeting by a direct haul reduction of rates or fares made by the shorter line.

The Commission does not hereby indicate that it will finally approve any rates and fares that may be filed under this permission, or concede the reasonableness of any higher rates to intermediate points, all of which rates and fares will be investigated at the hearing to be held January 2, 1912."

Here is an express permission to continue.

The COURT.—Yes, but would that meet your necessities? It is an express permission given in a tentative way—I mean given tentatively to continue to charge those rates under certain limitations as they had existed theretofore, but all, according to that order, to be thereafter the subject of adjustment by the Commission. It seems to me that, assuming that you had proceeded under that order, in order to show a valid charge in any instance where complaints would follow, that the charge made did transgress this constitutional provision, you would have to show that the Railroad Commission upon investigation did authorize the deviation from that provision, would you not?

Mr. BOOTH.—That is exactly the point. The

question is, what does that word "investigation" mean? The Railroad Commission had these tariffs on file with it, and they granted this permission, according to the order.

The COURT.—That order expressly shows they had not made any investigation up to that time because they fixed a future date for the investigation.

Mr. BOOTH.—A general investigation.

Mr. HARWOOD.—If your Honor please, the application of [180—26] that carrier was not on file when this order was made.

Mr. BOOTH.—That is true.

The COURT.—That is an extraordinary order, I presume, growing out of the fact that the amendment to the Constitution had been adopted so recently that they had not had time to investigate the whole subject yet.

Mr. BOOTH.—I suppose investigation with the railroad commission is different from a hearing which the courts speak of in their decisions. Hearing implies notice, opportunity to produce testimony.

The COURT.—Of course they investigate anything that is brought before them, but investigation in its general sense, as used with reference to the transactions of a board of this kind, has particular reference to investigations initiated by themselves on general lines.

Mr. BOOTH.—Your Honor will pardon the digression, but very often we have orders served on us by the Commission, on their motion, which recite that after an investigation the Commission is convinced the matter should be brought on for hearing. I take

it that the investigation meant in the amendment to the Constitution might be an investigation which would meet the definition of due process, or it might be an investigation to which we were not a party.

The COURT.—What does that amendment to the Constitution provide?

Mr. BOOTH.—“It shall be unlawful for any railroad or other transportation company to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates; provided, however, that upon application to the Railroad Commission provided for in this Constitution, such company may, in special cases, after investigation, be authorized by such commission to charge less for longer than for shorter distances for the transportation of persons or property.” [181—27]

The COURT.—That is limited by what immediately precedes it. It must be upon application by the company.

Mr. BOOTH.—Of course, if your Honor takes that view of the case I will frankly say the applications were not filed, as far as these specific rates were concerned, until the 30th of December, 1911. This order was dated on the 20th of November, 1911.

The COURT.—When did these movements of freight occur?

Mr. BOOTH.—The ones that we are immediately concerned with occurred between October 20, 1911, and May 27, 1912.

The COURT.—I do not see how they can be affected, Mr. Booth.

Mr. BOOTH.—I should like to have your Honor's permission to make a record of these documentary exhibits.

The COURT.—Yes, you are entitled to that. A reviewing court might put a different construction on the effect of the evidence. I will admit those offered, of course, with the understanding that counsel has of my views. I am simply admitting them for the purpose of enabling you to make a record.

Mr. HARWOOD.—Could that not be done by marking this for identification?

The COURT.—It can be done by admitting it in evidence.

Mr. BOOTH.—It can go in the record either way.

The COURT.—You may offer it; it may be marked for identification, and I will reserve the ruling until I see the effect of the whole offer that you make.

Defendant's counsel then offered a notice of the California Railroad Commission dated October 26, 1911. The offer was objected to on the ground that it was immaterial, irrelevant and incompetent, and that it did not show that the Railroad Commission after investigation had granted relief. The plaintiff expressly waived the objection that the notice was not certified to. The Court sustained the objection, whereupon defendant excepted. [182—28]

Said offer is in words and figures as follows: [183—29]

Exhibit No. 4.

**BEFORE THE RAILROAD COMMISSION OF
THE STATE OF CALIFORNIA.**

No. 214.

**IN THE MATTER OF THE PROVISIONS OF
SECTION 21 OF ARTICLE XII OF THE
CONSTITUTION OF CALIFORNIA, RE-
LATING TO LONG AND SHORT HAULS
AND THROUGH RATES EXCEEDING
AGGREGATE OF INTERMEDIATE
RATES.**

**NOTICE TO PRESENT LIST OF DEVIATIONS
AND TO JUSTIFY EXCEPTIONS.**

**To All Railroad and Other Transportation Com-
panies Within the State of California:**

You and each of you are hereby notified that at a regular meeting of the Railroad Commission of the State of California, held at the office of the Commission in the City of San Francisco, State of California, on the 16th day of October, 1911, all the commissioners being present and voting, the following resolution was unanimously adopted:

“Whereas Section 21 of Article XII of the Constitution of California, as amended on October 10, 1911, provides in part as follows:

‘It shall be unlawful for any railroad or other transportation company to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property for a shorter than for a longer dis-

tance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates. *Provided*, however, that upon application to the Railroad Commission, provided for in this constitution, such company may, in special cases, after investigation, be authorized by such commission to charge less for longer than for shorter distances for the transportation of persons or property, and the Railroad Commission may from time to time prescribe the extent to which such company may be relieved from the prohibition to charge less for the longer than for the shorter haul;" and,

[184—30]

Whereas, most of the railroad and other transportation companies of this State have filed with this commission certain schedules which are not in conformity with said provisions of the Constitution of this State, unless authorized by this commission.

NOW, THEREFORE, BE IT ORDERED that each railroad and other transportation company which has filed with this commission any schedule containing any rate or fare showing a greater compensation in the aggregate for the transportation of passengers or of like kind of property for a shorter than a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or a greater compensation as a through rate than the aggregate of the intermediate rates, file with this commission on or be-

fore the 2d day of January, 1912, a complete list of each rate or charge not in conformity with said provisions of the Constitution of this State, unless authorized by this commission, as shown by its schedules of rates and fares on file with this commission, showing in each case the name of the commodity or description of the traffic, or the passenger or other service, the point or points of origin and destination, the highest intermediate rate or fare with the name of the point (in case of long or short haul) or the different intermediate rates (in case of a greater compensation for a through route), and the rate or fare to the more distant point.

“BE IT FURTHER ORDERED, that each of said railroad and other transportation companies present to this commission on or before said 2d day of January, 1912, for examination and investigation by this commission, a new schedule or schedules removing said deviations from the provisions of said section of the Constitution of this State, or in case it is desired to justify the same, or any of them, an application or applications to be relieved from the provisions of said section, said application or applications to be in such of the two following forms as may meet the conditions as to which relief [185—31] is sought:

(a) The _____ (name of carrier) _____, through _____ (name of officer or agent making application) _____, its _____ (official title of officer or agent) _____, petitions the Railroad Commission of the State of California for authority to establish rates (or fares) for the transportation of _____

(name of commodity or description of traffic, or passengers) ——— from ——— (name of point or points of origin) ——— to ——— (name of point or points of destination) ——— lower than the rates (or fares) concurrently in effect to intermediate points ——— (names of all intermediate points) ———; the highest charge at such intermediate points to apply at ——— (name of intermediate point) ———, and to be not more than ——— (cents per 100 pounds, per ton, per car, or per package, or per passenger) ——— in excess of the rates to ——— (name of more distant) point to which lower rate is proposed) ———. This application is based upon the desire of petitioner to meet (by direct haul over a longer line or route, or by water competition), competitive conditions created at ——— (name of more distant point or points at which the lower rates or fares are proposed) ——— by ——— (name of railway, or of regular line of steamers or so-called "tramp-vessels").

(b) Application shall be made in general form the same as (a), but shall request authority to charge a higher rate or fare as the through rate or fare than the aggregate of the intermediate rates or fares. The application shall state clearly the [186—32] reasons in support thereof, and shall specify the extent to which it is desired to make the through rate or fare higher than the aggregate of the intermediate rates or fares.

Separate applications should be made for different situations governed by different rate adjustments or competitive influences. Where the rates or fares

are contained in a joint tariff schedule, a petition from the carrier which issued the schedule or from the duly authorized agent, specifying the same by C. R. C. number, may be made on behalf of the carriers lawfully parties to the schedule, and will be held and considered to be on behalf of all carriers concurring in the schedule. Each carrier may file as many applications as are necessary to present properly the several situations as to which it desires relief, and it is desired that each particular situation be treated by itself. Each application must be certified by the officer or agent making the same.

“AND BE IT FURTHER ORDERED, that the Secretary be and he is hereby ordered to serve a copy of that order on each of said railroad and other transportation companies and to notify each of them to comply with all the requirements hereof.”

And you are further notified to comply with each and all requirements of said resolution within the time or times in said resolution specified.

By order of the Commission.

[Seal] (Signed.) CHARLES R. DETRICK,
Secretary.

Dated San Francisco, California, October 26, 1911.

[187—33]

The defendant then offered the order of the California Railroad Commission in connection with Case No. 214, dated November 20, 1911, entitled “Permission to Carriers to Continue Present Rate Bases,” etc., which was objected to by the plaintiff on the ground that it was immaterial, irrelevant and incompetent, and did not show that the Railroad Commis-

sion after investigation had granted relief; plaintiff waiving objection to the offer, on the ground that it was not certified. The Court sustained the objection, and defendant excepted.

(Exception No. 5.)

The said order of November 20, 1911, was in words and figures as follows: [188—34]

Exhibit No. 5.

BEFORE THE RAILROAD COMMISSION OF
THE STATE OF CALIFORNIA.

No. 214.

IN THE MATTER OF THE PROVISIONS OF
SECTION 21 OF ARTICLE XII OF THE
CONSTITUTION OF CALIFORNIA, RE-
LATING TO LONG AND SHORT HAULS
AND THROUGH RATES EXCEEDING
AGGREGATE OF INTERMEDIATE
RATES.

PERMISSION TO CARRIERS TO CONTINUE
PRESENT RATE BASES AND ADJUST-
MENT OF RATES PENDING HEARING ON
APPLICATIONS FOR RELIEF FROM
PROVISIONS OF SECTION 21, ARTICLE
12, OF CONSTITUTION OF CALIFORNIA.

To All Railroads and Other Transportation Com-
panies Within the State of California:

Permission is hereby granted to railroads and other transportation companies until January 2d, 1912, to file for establishment with the Commission in the manner prescribed by law and in accordance with the Commission's regulations, such changes in rates

and fares as would occur in the ordinary course of their business, continuing, under the present rate bases or adjustments, higher rates or fares at intermediate points; provided, that in so doing the discrimination against intermediate points is not made greater than that in existence October 10th, 1911, except when a longer line or route desires to reduce rates or fares to the more distant point for the purpose of meeting by a direct haul reduction of rates or fares made by the shorter line.

The Commission does not hereby indicate that it will finally approve any rates and fares that may be filed under this permission or concede the reasonableness of any higher rates to intermediate points, [189—35] all of which rates and fares will be investigated at the hearing to be held January 2d, 1912.

By order of the Commission.

CHARLES R. DETRICK,

Secretary.

Dated San Francisco, California, November 20th, 1911.

A true copy.

[Seal] (Signed.) H. G. MATHEWSON,
Assistant Secretary Railroad Commission, State of
California. [190—36]

The defendant then offered certified copies of Southern Pacific Company petitions Nos. 3, 9, 10, 30 and 40, addressed to the Railroad Commission of the State of California, asking for relief from the provisions of Section 21 of Article XII of the California Constitution as amended October 10, 1911, with respect to the rates specified in those petitions.

Mr. HARWOOD.—The objection is made to these petitions that they are irrelevant, immaterial and incompetent.

The COURT.—What are these petitions, and when were they filed?

Mr. BOOTH.—They were filed on December 30, 1911, and were filed pursuant to the order of the Commission of November 20, and the notice dated October 26, 1911, which have just been refused admission.

The COURT.—They relate to antecedent transactions, do they?

Mr. BOOTH.—They relate to the rates which were in effect on October 10, 1911, and ask permission to have those rates continued in force on account of competitive conditions compelling the lower rate for the more distant transportation.

The COURT.—The petitions were filed subsequent to the date of the charges that are here in suit, were they?

Mr. BOOTH.—Before the date of some of the charges and subsequent to the date of others.

The COURT.—Are any of the charges here sued for charges that were made after these petitions had been acted upon?

Mr. BOOTH.—These petitions may be considered to have been pending until May 27, 1912. They had not been specifically acted upon either prior to that time or since that time, except in so far as the decision in Case 116, which I am going to offer shortly, may be considered to have affected them.

The COURT.—They were never specifically acted upon? [191—37]

Mr. BOOTH.—No, your Honor.

The COURT.—What is the date of the last of these charges that is sued for?

Mr. HARWOOD.—May 27, 1912, your Honor.

The COURT.—The same ruling will be had as to this offer of these petitions.

Mr. BOOTH.—Exception.

(Exception No. 6.)

Said petitions so offered and excluded were in words and figures as follows: [192—38]

FORM B.

Petition No. 10. C. R. C. No. —

SOUTHERN PACIFIC COMPANY.

(Pacific System)

FREIGHT TRAFFIC DEPARTMENT.

To the Railroad Commission of California,

San Francisco, California.

APPLICATION FOR RELIEF FROM PROVISIONS OF SECTION 21 OF ARTICLE XII OF THE CONSTITUTION OF CALIFORNIA AS AMENDED OCTOBER 10, 1911, FOR ACCOUNT OF TARIFF LOCAL FREIGHT TARIFF #37 C. R. C. NO. 12, WHICH IS ON FILE WITH YOUR HONORABLE COMMISSION:

The SOUTHERN PACIFIC COMPANY, through H. A. JONES, its Freight Traffic Manager, petitions the Railroad Commission of California for authority to continue for itself and participating carriers, which may be named in above-mentioned tariff, rates for the transportation of property as described in Column No. 1, page 2, from points specified in Col-

umn No. 2, and to points specified in Column No. 3, lower rates than concurrently in effect from or to intermediate points as described in Column No. 4; the highest charge at such intermediate points to apply at point shown in Column No. 5, and to be not more than cents per 100 lbs., shown in Column No. 6 in excess of the rates to points shown in Column No. 7.

The following tabulation, page 2, outlines in a general way the adjustment of rates covered by tariff C. R. C. No. 12, and is in the nature of an explanation of the general features where the rates do not conform to Section 21 of Article XII of the Constitution of California as Amended October 10, 1911. There are, however, instances other than those specifically mentioned in this petition in which the charges are greater in the aggregate for the transportation of like kinds of property for the shorter than for the longer distance over the same line or road in the same direction, the shorter being included within the longer distance, but it is not practicable to state them all in detail in this petition, and it is the desire of your petitioner to continue such rates in force as in said tariff provided, reference hereby being made to said tariff for further details and particulars as to said rates.

This application is based upon the desire of petitioner to meet by direct haul, lower rates fixed at the more distant point by competition with water car-

riers, viz.: by the California Transportation Company and "tramp" vessels.

Respectfully submitted,
SOUTHERN PACIFIC COMPANY.

By H. A. JONES,
Its Freight Traffic Manager.

By H. G. TOLL.

Subscribed and sworn to before me this 30th day of December, 1911.

[Seal] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires Feb. 25, 1914. [193—39]

Southern Pacific Company vs.

| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 | Column 7 |
|----------------------------|---------------|-------------|----------------------------------|------------------------|-------------------|--|
| Description of Traffic. | From | To | Description of | High Rate | Excess of Rate | More Distant Point at Which Lower Rate is Proposed. |
| Class Rates | San Francisco | Tracy | Intermediate Points. | Intermediate Point. | Per 100 Lbs. | |
| 1st Class | | | Rodeo | | | |
| Do. | | | Bethany and points between | Herdlyn | 7 | Tracy |
| | | | Alston | | | |
| | | | Ellis and points between | Cayley | 8 | Tracy |

This will also cover rates to and from points beyond and to and from intermediate points which are influenced by rates shown above.

FORM A.

Petition No. 40.

C. R. C. No. —

SOUTHERN PACIFIC COMPANY.

(Pacific System)

FREIGHT TRAFFIC DEPARTMENT.

To the Railroad Commission of California,
San Francisco, California.

APPLICATION FOR RELIEF FROM PROVI-
SIONS OF SECTION 21 OF ARTICLE XII
OF THE CONSTITUTION OF CALIFOR-
NIA AS AMENDED OCTOBER 10, 1911,
FOR ACCOUNT OF TARIFF S. P. CO.
COMM. SPECIALS #16-Y C. R. C. NO. 84,
WHICH IS ON FILE WITH YOUR HON-
ORABLE COMMISSION:

The SOUTHERN PACIFIC COMPANY,
through H. A. JONES, its Freight Traffic Manager,
petitions the Railroad Commission of California for
authority to continue for itself and participating car-
riers, which may be named in above-mentioned tariff,
rates for the transportation of property as described
in Column No. 1, page 2, from points specified in Col-
umn No. 2, and to points specified in Column No. 3,
lower rates than concurrently in effect from or to in-
termediate points as described in Column No. 4; the
highest charge at such intermediate points to apply
at point shown in Column No. 5, and to be not more
than cents per 100 lbs., shown in Column No. 6 in
excess of the rates to points shown in Column No. 7.

The following tabulation, page 2, outlines in a gen-
eral way the adjustment of rates covered by tariff

C. R. C. No. 84, and is in the nature of an explanation of the general features where the rates do not conform to Section 21 of Article XII of the Constitution of California as Amended October 10, 1911. There are, however, instances other than those specifically mentioned in this petition in which the charges are greater in the aggregate for the transportation of like kinds of property for the shorter than for the longer distance over the same line or road in the same direction, the shorter being included within the longer distance, but it is not practicable to state them all in detail in this petition, and it is the desire of your petitioner to continue such rates in force as in said tariff provided, reference hereby being made to said tariff for further details and particulars as to said rates.

This application is based upon the desire of petitioner to meet by direct haul over a longer line or route competitive conditions created at by Pacific Coast Steamship Company and various other water-faring craft.

Respectfully submitted,

SOUTHERN PACIFIC COMPANY.

By H. A. JONES,

Its Freight Traffic Manager.

By H. G. TOLL.

Subscribed and sworn to before me this 30th day of December, 1911.

[Seal]

E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires Feb. 25, 1914. [194—41]

| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 | Column 7 |
|----------------------------|---------------|-------------|--|--|--------------------------------------|--|
| Description of Traffic. | From | To | Description of Intermediate Points. | High Rate Intermediate Point. | Excess of Rate Per 100 Lbs. | More Distant Point at Which Lower Rate is Proposed. |
| Canned Goods Carloads | San Francisco | Los Angeles | Cadwall Lingard Tropico and points between | Lancaster | 44 | Los Angeles |
| Do. | Do. | Do. | Spence Tropico and points between | Paso Robles | 16 | Los Angeles |

This will also cover rates to and from points beyond and to and from intermediate points which are influenced by rates shown above.

FORM B.

Petition No. 9.

C. R. C. No. —

SOUTHERN PACIFIC COMPANY.

(Pacific System)

FREIGHT TRAFFIC DEPARTMENT.

To the Railroad Commission of California,
San Francisco, California.

APPLICATION FOR RELIEF FROM PROVISIONS OF SECTION 21 OF ARTICLE XII OF THE CONSTITUTION OF CALIFORNIA AS AMENDED OCTOBER 10, 1911, FOR ACCOUNT OF TARIFF LOCAL FREIGHT TARIFF #37 C. R. C. NO. 12, WHICH IS ON FILE WITH YOUR HONORABLE COMMISSION:

The SOUTHERN PACIFIC COMPANY, through H. A. JONES, its Freight Traffic Manager, petitions the Railroad Commission of California for authority to continue for itself and participating carriers, which may be named in above-mentioned tariff, rates for the transportation of property as described in Column No. 1, page 2, from points specified in Column No. 2, and to points specified in Column No. 3, lower rates than concurrently in effect from or to intermediate points as described in Column No. 4; the highest charge at such intermediate points to apply at point shown in Column No. 5, and to be not more than cents per 100 lbs., shown in Column No. 6 in excess of the rates to points shown in Column No. 7.

The following tabulation, page 2, outlines in a general way the adjustment of rates covered by tariff

C. R. C. No. 12, and is in the nature of an explanation of the general features where the rates do not conform to Section 21 of Article XII of the Constitution of California as Amended October 10, 1911. There are, however, instances other than those specifically mentioned in this petition in which the charges are greater in the aggregate for the transportation of like kinds of property for the shorter than for the longer distance over the same line or road in the same direction, the shorter being included within the longer distance, but it is not practicable to state them all in detail in this petition, and it is the desire of your petitioner to continue such rates in force as in said tariff provided, reference hereby being made to said tariff for further details and particulars as to said rates.

This application is based upon the desire of petitioner to meet by direct haul, ~~lower rates fixed at the more distant point by competition with water carriers viz.: by the~~ over a longer line or route competitive conditions created at Tulare by A. T. & S. F. Ry. and "tramp" vessels.

Respectfully submitted,
SOUTHERN PACIFIC COMPANY.
By H. A. JONES,
Its Freight Traffic Manager.
By H. G. TOLL.

Subscribed and sworn to before me this 30th day of December, 1911.

[Seal] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires Feb. 25, 1914. [195—43]

| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 | Column 7 |
|--|-----------------|--------------|--|--|--------------------------------------|--|
| Description of Traffic. Class Rates (1st Class) | From Visalia | To Tulare | Description of Intermediate Points, Goshen Jct. Tagus | High Rate Intermediate Point. | Excess of Rate Per 100 Lbs. | More Distant Point at Which Lower Rate is Proposed. |
| | | | | Tagus | 9 | Tulare |

FORM B.

Petition No. 3.

C. R. C. No. —

SOUTHERN PACIFIC COMPANY.

(Pacific System)

FREIGHT TRAFFIC DEPARTMENT.

To the Railroad Commission of California,
San Francisco, California.

APPLICATION FOR RELIEF FROM PROVI-
SIONS OF SECTION 21 OF ARTICLE XII
OF THE CONSTITUTION OF CALIFOR-
NIA AS AMENDED OCTOBER 10, 1911,
FOR ACCOUNT OF TARIFF LOCAL
RATES OF JAN. 1, 1894, C. R. C. NO. 134,
WHICH IS ON FILE WITH YOUR HON-
ORABLE COMMISSION:

The SOUTHERN PACIFIC COMPANY,
through H. A. JONES, its Freight Traffic Manager,
petitions the Railroad Commission of California for
authority to continue for itself and participating car-
riers, which may be named in above-mentioned tariff,
rates for the transportation of property as described
in Column No. 1, page 2, from points specified in Col-
umn No. 2, and to points specified in Column No. 3,
lower rates than concurrently in effect from or to in-
termediate points as described in Column No. 4; the
highest charge at such intermediate points to apply
at point shown in Column No. 5, and to be not more
than cents per 100 lbs., shown in Column No. 6 in
excess of the rates to points shown in Column No. 7.

The following tabulation, page 2, outlines in a gen-
eral way the adjustment of rates covered by tariff

C. R. C. No. 134, and is in the nature of an explanation of the general features where the rates do not conform to Section 21 of Article XII of the Constitution of California as Amended October 10, 1911. There are, however, instances other than those specifically mentioned in this petition in which the charges are greater in the aggregate for the transportation of like kinds of property for the shorter than for the longer distance over the same line or road in the same direction, the shorter being included within the longer distance, but it is not practicable to state them all in detail in this petition, and it is the desire of your petitioner to continue such rates in force as in said tariff provided, reference hereby being made to said tariff for further details and particulars as to said rates.

This application is based upon the desire of petitioner to meet by direct haul, lower rates fixed at the more distant point by competition with water carriers, viz.: by the California Transportation Company et al. and "tramp" vessels.

Respectfully submitted,

SOUTHERN PACIFIC COMPANY.

By H. A. JONES,

Its Freight Traffic Manager.

H. G. TOLL.

Subscribed and sworn to before me this 30th day of December, 1911.

[Seal]

E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires Feb. 25, 1914. [196—45]

| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 | Column 7 |
|----------------------------|---------------|-------------|---|--|--------------------------------------|--|
| Description of Traffic. | From | To | Description of Intermediate Points. | High Rate Intermediate Point. | Excess of Rate Per 100 Lbs. | More Distant Point at Which Lower Rate is Proposed. |
| Class Rates (1st Class) | San Francisco | Stockton | Rodeo Bethany and points between Alston Ellis and points between | Herdlyn Cayley | 7 | Stockton Stockton |

This will also cover rates to and from points beyond and to and from intermediate points which are influenced by rates shown above.

FORM B.

Petition No. 30.

C. R. C. No. —

SOUTHERN PACIFIC COMPANY.

(Pacific System)

FREIGHT TRAFFIC DEPARTMENT.

To the Railroad Commission of California,
San Francisco, California.

APPLICATION FOR RELIEF FROM PROVISIONS OF SECTION 21 OF ARTICLE XII OF THE CONSTITUTION OF CALIFORNIA AS AMENDED OCTOBER 10, 1911, FOR ACCOUNT OF TARIFF S. P. CO.'S NO. 659 C. R. C. NO. 805, WHICH IS ON FILE WITH YOUR HONORABLE COMMISSION:

The SOUTHERN PACIFIC COMPANY, through H. A. JONES, its Freight Traffic Manager, petitions the Railroad Commission of California for authority to continue for itself and participating carriers, which may be named in above-mentioned tariff, rates for the transportation of property as described in Column No. 1, page 2, from points specified in Column No. 2, and to points specified in Column No. 3, lower rates than concurrently in effect from or to intermediate points as described in Column No. 4; the highest charge at such intermediate points to apply at point shown in Column No. 5, and to be not more than cents per 100 lbs., shown in Column No. 6 in excess of the rates to points shown in Column No. 7.

The following tabulation, page 2, outlines in a general way the adjustment of rates covered by tariff

C. R. C. No. 805, and is in the nature of an explanation of the general features where the rates do not conform to Section 21 of Article XII of the Constitution of California as Amended October 10, 1911. There are, however, instances other than those specifically mentioned in this petition in which the charges are greater in the aggregate for the transportation of like kinds of property for the shorter than for the longer distance over the same line or road in the same direction, the shorter being included within the longer distance, but it is not practicable to state them all in detail in this petition, and it is the desire of your petitioner to continue such rates in force as in said tariff provided, reference hereby being made to said tariff for further details and particulars as to said rates.

This application is based upon the desire of petitioner to meet by direct haul, lower rates fixed at the more distant point by competition with water carriers, viz.: by the Pacific Coast Steamship Co.; also rail to ports, thence via Pacific Coast Steamship Company and "tramp" vessels.

Respectfully submitted,

SOUTHERN PACIFIC COMPANY.

By H. A. JONES,

Its Freight Traffic Manager.

H. G. TOLL.

Subscribed and sworn to before me this 30th day of December, 1911.

[Seal]

E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires Feb. 25, 1914. [197—47]

| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 | Column 7 |
|---|---------------|---------------|--|--|--------------------------------------|--|
| Description of Traffic. | From | To | Description of Intermediate Points. | High Rate Intermediate Point. | Excess of Rate Per 100 Lbs. | More Distant Point at Which Lower Rate is Proposed. |
| Flour, Cereal and cereal products Carloads | San Francisco | Los Angeles | Octol Burr Tropico and points between | Sylmar | 7½ | Los Angeles |
| Do. | Do. | Do. | Cuesta Tropico and points between | Sylmar Canoga Burbank | 7½ 6¼ 4¼ | Los Angeles |
| Do. | Chico | Do. | Lingard Gadwall Tropico and points between | Acton | 15¼ | Do. |
| Do. | Sacramento | Santa Barbara | Edison Saugus and points between | Honby | 5 | Santa Barbara |

This will also cover rates to and from points beyond and to and from intermediate points which are influenced by rates shown above.

Defendant then offered a copy of the minutes of the California Railroad Commission, of January 2, 1912:

Mr. HARWOOD.—That is a correct copy, with the exception of the reporter's transcript which is therein referred to, and that matter was covered by the stipulation which is on file.

Mr. BOOTH.—I understand no objection is made to this on the ground of lack of certification?

Mr. HARWOOD.—No.

Mr. BOOTH.—You do make the general objection to it?

Mr. HARWOOD.—Yes.

The COURT.—What is it?

Mr. BOOTH.—That is a copy of the minutes of the Railroad Commission reciting that on January 2, 1912, Case 214 came on for hearing. There was a discussion held, but no evidence introduced, nothing further done; it was postponed without day.

The COURT.—The same ruling.

Mr. BOOTH.—Exception.

(Exception No. 7.)

Said offer was in words and figures as follows:

[198—49]

In the matter of Case No. 214 entitled "In the matter of the provisions of Section 21 of Article 12 of the Constitution of California relating to long and short hauls and through rates exceeding aggregate of intermediate rates," set for hearing at this time and place, the Commission proceeded to a hearing of the same. The following appearances were entered:

C. J. Bradley of the Merchants and Manufactur-

ers' Association of Sacramento.

W. R. Wheeler and Seth Mann of the Traffic Bureau of the Merchant's Exchange.

F. R. Hill of the Fresno Traffic Association.

F. P. Gregson of the Associated Jobbers of Los Angeles.

G. W. Luce and C. W. Durbrow of the Southern Pacific Company.

Edward Chambers and H. P. Anewalt of the Atchison, Topeka & Santa Fe Railway.

E. S. Pillsbury of Wells, Fargo & Company Express.

Archibald Gray and C. H. Helting of the Western Pacific Railway.

William Henshaw of the Southern California Cement Company.

Discussion was held until 11:05 A. M.

(See Reporter's Transcript.)

It is hereby certified that the foregoing is a true copy of minutes of the meeting of the Railroad Commission of the State of California held on the 2d of January, 1912, in so far as said minutes relate to case No. 214. [199—50]

The defendant then offered in evidence (the plaintiff waiving objection as to lack of certification) an order of the Railroad Commission of January 16, 1912, in its Case 214, extending time for filing relief applications to February 15, 1912, which said offer was objected to by plaintiff as irrelevant, incompetent and immaterial, the objection being sustained

by the court, and defendant excepting.

(Exception No. 8.)

Said offer was in words and figures as follows:
[200—51]

BEFORE THE RAILROAD COMMISSION OF
THE STATE OF CALIFORNIA.

No. 214.

IN THE MATTER OF THE PROVISIONS OF
SECTION 21 OF ARTICLE XII OF THE
CONSTITUTION OF CALIFORNIA RE-
LATING TO LONG AND SHORT HAULS
AND THROUGH RATES EXCEEDING
AGGREGATE OF INTERMEDIATE
RATES.

It is hereby ordered that the time heretofore granted to the railroad and other transportation companies of the State within which to file with this Commission new schedules removing deviations from the provisions of Section 21 of Article XII of the Constitution of this State, or in case it is decided to justify the same, or any of them, applications to be relieved from the provisions of said section, be and the same is hereby extended to February 15, 1912, at which time said schedules or applications must be filed with this Commission. As to any rate or fare as to which neither such schedule nor such application has been filed with this Commission by said date, the provisions of said section 21, Article XII, of the Constitution will at once become operative, and the lower rate or fare for a longer distance will become the maximum rate or fare for all intermedi-

ate points on the same line or route for movements in the same direction, the shorter haul being included within the longer distance, and the aggregate of the intermediate rates or fares will become the through rate or fare in cases in which the through rate or fare is now in excess of the aggregate of the intermediate rates or fares.

Until February 15, 1912, the railroad and other transportation companies may file for establishment with the Commission in the manner prescribed by law and in accordance with the Commission's regulations such changes in rates and fares as would occur in the [201—52] ordinary course of their business, continuing, under the present rate bases or adjustments, higher rates or fares at intermediate points: Provided that in so doing the discrimination against intermediate points is not made greater than that in existence October 10, 1911, except when a longer line or route desires to reduce rates or fares to the most distant point for the purpose of meeting by a direct haul reduction of rates or fares made by the shorter line. The Commission does not hereby indicate that it will finally approve any rates and fares that may be filed under this permission or concede the reasonableness of any higher rates to intermediate points, all of which rates and fares will be subject to investigation and correction.

And be it further ordered that the Secretary be and he is hereby ordered to serve a copy of this order on each of said railroad and other transportation companies and to notify each of them to comply with all the requirements hereof.

Dated: January 16, 1912. [202—53]

The defendant then offered a certified copy of Decision No. 116 of the California Railroad Commission in the case of Traffic Bureau of the Merchants' Exchange vs. Southern Pacific Company, dated March 28, 1912, which said offer was objected to on the ground that it was immaterial, irrelevant, incompetent, and not made by the Commission in pursuance of the section of the Constitution in question, and not made by the Commission upon the application for relief made by the carriers, and upon the further ground that the order was not effective until all the shipments described in the complaint had moved.

The COURT.—What is this, Mr. Booth?

Mr. BOOTH.—Its only bearing in this case is the effect on the roofing paper rate; inasmuch as counsel objects upon the ground that it did not become finally effective until May 27th, and the objection is well taken and that is correct, I will stipulate to that, for the purpose of saving putting in or offering the extension order.

The COURT.—What is the purpose of the offer?

Mr. BOOTH.—The purpose of the offer is to show that these rates were under consideration by the Commission from the time [the applications were] filed; that they only decided with respect to one set of rates during the period covered by the complaint.

The objection was sustained, and the defendant excepted.

(Exception No. 9.)

Said offer was as follows: [203—54]

Exhibit No. 7.**Decision.****COPY.**

BEFORE THE RAILROAD COMMISSION OF
THE STATE OF CALIFORNIA.

No. 116.

TRAFFIC BUREAU OF THE MERCHANTS'
EXCHANGE,

Complainants,

vs.

SOUTHERN PACIFIC COMPANY (a Corpora-
tion), and ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY (a
Corporation),

Defendants,

ASSOCIATED JOBBERS OF LOS ANGELES,
STOCKTON JOBBERS' AND MAN-
UFACTURERS' ASSOCIATION, KERN
COUNTY MERCHANTS' ASSOCIATION,
FRESNO TRAFFIC ASSOCIATION,

Intervenors.

On December 24, 1910, the Railroad Commission decided Case No. 110, wherein an adjustment of the class rates between San Francisco, Stockton, and Los Angeles and San Joaquin Valley points was made, and made the effective date of the order February 15, 1911. Before this date, the Traffic Bureau of the Merchants' Exchange of San Francisco applied to the Commission for a rehearing, which application was contested by the Associated Jobbers of Los An-

geles. Thereafter and before the effective date of such order, the Commission denied the application for a rehearing. On March 2, 1911, the Traffic Bureau of the Merchants' Exchange of San Francisco filed a complaint against the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company in which complaint that portion of the order in Case No. 110, which provided that Stockton should have "the benefit of a differential under San Francisco equal to the existing class rates from San Francisco to Stockton upon all classes to all points involved" was attacked, and the complainant urged that it was [204—55] "not concerned with these arbitrary additions to said rates as they existed at the time of filing this complaint and provided that the same are left to adjustment brought about by untrammelled water competition and are not in any other manner whatsoever fixed or determined." On this theory of the proper method to make rates from San Francisco into the San Joaquin Valley, the complaint attacks all class rates from the City of Stockton to all points in the San Joaquin Valley and "charges that said rates applying from Stockton to the points named are, and each of them is, excessive, unreasonable, unjust and unlawful." Regardless of its contention, however, that the rates from San Francisco shall be left "to adjustment brought about by untrammelled water competition and are not in any other manner whatsoever fixed or determined," the complaint prays that this Commission "determine and prescribe what will be the just and reasonable rates and charges to be hereafter ob-

served and charged for the transportation of merchandise from said Cities of San Francisco and Stockton, respectively, to points in the San Joaquin Valley." Thereafter the Southern Pacific and the Atchison, Topeka & Santa Fe Railway Company filed answers denying the material allegations of the complaint. The Associated Jobbers of Los Angeles were permitted by the Commission to intervene on the question of the reasonableness of the class rates from Los Angeles to all points in the San Joaquin Valley and from all points within the San Joaquin Valley to Los Angeles, and the Stockton Jobbers' and Manufacturers' Association, the Kern County Merchants' Association and the Fresno Traffic Association were also permitted to intervene on the sole question of the reasonableness of the rates attacked in the complaint and by the Los Angeles intervenors. The case was tried by all parties on the theory that only main line points are involved.

We have therefore directly in issue all the rates on the main lines of these two carriers between Stockton and all points in the [205—56] San Joaquin Valley and between all points within the San Joaquin Valley and all other points within the San Joaquin Valley and from Los Angeles to all points in the San Joaquin Valley and from all points within the San Joaquin Valley to Los Angeles; and after careful consideration of all the evidence presented in the case, the Commission is of the opinion and finds, as a fact, that the rates in question insofar as they exceed the rates set out in the schedules hereto attached and made a part hereof, are excessive, unjust

and unreasonable, and the Commission sets out herein schedules of rates to be observed by these carriers, respectively, for the transportation of freight at class rates between the points named therein, and finds the rates set out in such schedules to be just and reasonable rates.

In order that there may be no misapprehension on the part of the carriers involved as to the scope of this decision, we have, as already indicated, prescribed the actual rates to be charged between all points involved, and as to such rates there can be no confusion. As to rates from and to points other than those involved in this decision in making such adjustments as may be made necessary by this decision, the carriers will, of course, bear in mind, the provisions of Article XII, Section 21 of the Constitution of this State preventing the charging of a greater compensation in the aggregate for the transportation of a like kind of property for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer, and also that portion of the same section preventing the charging of any greater compensation as a through rate than the aggregate of the intermediate rates, and likewise Article XII, Section 20 of the Constitution preventing the increase of any rates without the permission of the Railroad Commission.

Two Schedules of class rates are attached hereto and made a part hereof. Schedule No. 1 is hereby established as just and reasonable [206—57] rates to be observed by the Southern Pacific Com-

pany, and Schedule No. 2 is hereby established as just and reasonable rates to be observed by the Atchison, Topeka & Santa Fe Railway Company, both of such schedules to become effective on the 27th day of April, 1912, and before such time the carriers are instructed to present to this Commission, and to distribute as required by law, printed copies of such tariffs.

Dated March 28, 1912.

San Francisco, California.

JOHN M. ESHLEMAN,

H. D. LOVELAND,

ALEX GORDON,

Commissioners.

A true copy.

[Seal] (Signed) H. G. MATHEWSON,
Assistant Secretary Railroad Commission, State of
California.

(The schedule of rates herein referred to are on file in the office of the Railroad Commission of the State of California.)

It is hereby certified that the foregoing contains a full, true, and correct copy of the decision and order of the Railroad Commission of the State of California, in Case 116, Decision No. 56, decided March 28, 1912, and reported in Volume 1 of the published Opinions and Orders of said Commission at page 95 and following, with the exception of the schedules of rates referred to in said order.

It is further certified that in said schedules of rates there appeared a 5th class rate of 43 cents per 100 pounds applicable on roofing paper in carload

lots from Los Angeles to Fresno, and that said last mentioned rate was in effect June 11, 1912, and said last mentioned rate appears in Southern Pacific Company's freight tariff No. 711, California Railroad Commission No. 1515, which said last mentioned tariff was filed with this Commission and became effective according to its terms on May 27, 1912, and is now on file with this Commission.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said Commission on this 3 day of April, 1915.

(Signed) CHARLES R. DETRICK, (Seal)
Secretary, Railroad Commission of the State of California. [207—58]

F. W. GOMPH was recalled as a witness for the defendant:

Mr. BOOTH.—This witness' testimony, if your Honor please, and the documentary evidence I intend to offer, are addressed to the question of whether the Railroad Commission established the local rates or intermediate rates shown on Exhibit "A" prior to October 10, 1911, the rates so established being in conflict with the long and short haul clause in the Constitution as it stood up to October 10, 1911. I want to renew my question to Mr. Gomph by asking him if this letter which I show him, a certified copy of a letter which I show him, is a correct copy of a letter sent to the California Railroad Commission by the Southern Pacific Company through the witness' agency, transmitting the tariffs therein specified, and if these tariffs were filed with the Commission.

Mr. HARWOOD.—That is objected to as immaterial, irrelevant and incompetent.

The COURT.—That is simply for the purpose of showing that they did establish these tariffs prior to the amendment to the Constitution?

Mr. BOOTH.—Yes, your Honor.

The COURT.—I do not see the materiality of it. What is the materiality of it?

Mr. BOOTH.—The materiality of it is to follow it up by an order of the Commission dated June 11, 1909, establishing all tariffs on file with it as to the rates for transportation of freight and passengers between points in the State.

The COURT.—Of course, that order as well as this offer occurred before the amendment to the Constitution?

Mr. BOOTH.—Yes, your Honor.

The COURT.—The objection will be sustained.

Mr. BOOTH.—Exception. The letter of May 7, 1909, may be marked for identification.

The COURT.—Yes.

Exception No. 10.

Said letter was as follows: [208—59]

Exhibit No. 2.

(COPY)

ACT

Z-11713

May 7th, 1909.

Board of Railroad Commissioners,
San Francisco, Cal.

Gentlemen:—We beg to acknowledge receipt of your favor of April 26th, in regard to filing Tariffs with your Board;

We have placed a C. R. C. No. on the upper margin of all Tariffs and Circulars which name rates or rules and regulations affecting rates on traffic having both origin and destination within the State of California, and are handing you herewith all such issues published by the Southern Pacific Co. which are in effect on this date. The Tariffs are numbered consecutively with the lowest number on the bottom, and all supplements have been placed within each Tariff or attached to same in a secure manner which will enable you to readily place our entire issue in your files. It is understood that where other lines have issued Joint Tariffs in connection with the Southern Pacific Co. under proper concurrence, the issuing line only files such Tariffs with your Board, and that it is not necessary for other lines parties to such joint Tariffs to also file same under their individual C. R. C. No. which would only result in endless duplication of Tariffs in your files. Have asked the Chairman of the Western Classification Committee, and Mr. Mote of the Pacific Car Service Bureau, to file the Western Classification and the Car Demurrage Tariff with you direct for our account.

Following is a detailed statement of tariffs enclosed herewith, showing C. R. C. No., Tariff No., and Supplements by both C. R. C. No. and Tariff No.

Will you please favor us with a receipt for all of these issued. This communication is sent you in duplicate, so that it may be used to check our figures, and serve to return one copy to us as a receipt for the publications. [209—60]

| C. R. C. | | Supplements. | | |
|----------|----------|--------------|---|---|
| No. | | Tariff No. | C. R. C. No. | Tariff No. |
| 1 | L. F. T. | 1 | 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37. | 67, 71, 74, 75, 76, 79, 80, 83, 84, 87, 88, 89, 90, 91, 93, 94, 95, 97, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117. |
| 2 | L. F. T. | 3 | 1, 2, 3, | 1, 2, 3. |
| 3 | L. F. T. | 4-A | | |
| 4 | L. F. T. | 5 | 1, | 2 |
| 5 | L. F. T. | 9-A | 1, 2, | 3, 4 |
| 6 | L. F. T. | 10-A | 1, 2, 3. | 4, 5, 6, |
| 7 | L. F. T. | 14-A | 1, 2, | 3, 4 |
| 8 | L. F. T. | 28-B | | |
| 9 | L. F. T. | 34-C | | |
| 10 | L. F. T. | 35 | | |
| 11 | L. F. T. | 36 | | |
| 12 | L. F. T. | 37 | 1, 2, | 3, 7, |
| 13 | L. F. T. | 39 | 1, | 1, |
| 14 | L. F. T. | 61-C | | |
| 15 | L. F. T. | 63-A | 1, | 1, |
| 16 | J. F. T. | 75 | 1, 2, | 2, 3, |
| 17 | L. F. T. | 79-B | | |
| 18 | J. F. T. | 83-A | | |
| 19 | J. F. T. | 84 | 1, 2, | 3, 4, |
| 20 | J. F. T. | 92 | 1, 2, | 4, 5 |
| 21 | L. F. T. | 102 | 1, 2, | 1, 3 |
| 22 | L. F. T. | 121-A | 1, 2, | 4, 5 |
| 23 | J. F. T. | 134-B | | |
| 24 | J. F. T. | 153-B | 1, | 1, |
| 25 | L. F. T. | 181-A | | |
| 26 | J. F. T. | 183-A | | |
| 27 | L. F. T. | 193 | 1, 2, | 2, 3 |
| 28 | L. F. T. | 195 | | |
| 29 | L. F. T. | 201-A | | |
| 30 | T. T. | 230-D | 1, | 1, |
| 31 | L. F. T. | 251-A | 1, | 3, |
| 32 | J. F. T. | 276-B | 1, 2, 3. | 1, 2, 3, |
| 33 | C. T. | 291-C | | |
| 34 | L. F. T. | 298 | | |
| 35 | L. F. T. | 301 | | |
| 36 | J. F. T. | 305 | 1, | 3, |
| 37 | L. F. T. | 316-B | | |
| 38 | J. F. T. | 320-A | | |
| 39 | J. F. T. | 322-A | | |
| 40 | J. F. T. | 327-A | | |
| 41 | L. F. T. | 330-B | 1, 2, 3. | 1, 2, 3, |
| 42 | L. F. T. | 332 | 1, 2, | 1, 2 |
| 43 | L. F. T. | 335-B | 1, 2, 3. | 1, 2, 3, |
| 44 | J. F. T. | 336 | | |
| 45 | L. F. T. | 339-B | | |
| 46 | J. F. T. | 340-A | | |

| R. C. No. | Tariff No. | Supplements. C. R. C. No. | Tariff No. |
|-----------|---------------------|------------------------------|---|
| 47 | L. F. T. | 348-B | |
| 48 | J. F. T. | 349-B | |
| 49 | L. F. T. | 350-C | |
| 50 | L. F. T. | 353-A | |
| 51 | J. F. T. | 358 | |
| 52 | L. F. T. | 360-D | |
| 53 | L. F. T. | 362 | |
| 54 | J. F. T. | 374 | 1, 2 |
| 55 | L. F. T. | 380-A | 1, 1, |
| 56 | L. F. T. | 381 | |
| 57 | L. F. T. | 382-A | |
| 58 | L. F. T. | 383-B | |
| 59 | J. F. T. | 384 | |
| 60 | J. F. T. | 404-A | 1, 2, 3, 1, 2, 3, |
| 61 | L. F. T. | 421 | 1, 2, 1, 2 |
| 62 | L. F. T. | 440 | 1, 1, |
| 63 | L. F. T. | 441 | 1, 1, |
| 64 | L. F. T. | 442 | 1, 4 |
| 65 | J. F. T. | 446-A | 1, 2 |
| 66 | J. F. T. | 469 | 1, 1, |
| 67 | J. F. T. | 473 | |
| 68 | J. F. T. | 474 | 1, 1, |
| 69 | J. F. T. | 475 | |
| 70 | L. F. T. | 476 | |
| 71 | L. F. T. | 477 | |
| 72 | J. F. T. | 478 | |
| 73 | J. F. T. | 490 | |
| 74 | J. F. T. | 491-A | |
| 75 | J. F. T. | 505 | |
| 76 | J. F. T. | 511 | |
| 77 | L. F. T. | 523 | 1, 1, |
| 78 | Com. Trf. | 6 | 1, 3, |
| 79 | " " | 7 | 1, 10 |
| 80 | " " | 9 | 1, 2, 3, 3, 9, 12 |
| 81 | " " | 73-G | 1, 2, 3, 6, 7, 8 |
| 82 | " " | 78-G | 1, 2, 3, 7, 10, 12 |
| 83 | " " | 82-G | 1, 2, 3, 1, 8, 10 |
| 84 | Com. Specs. | 16-Y | 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 1, 3, 11, 19, 24, 26, 29, 31, 33, 35, 36, 37, 38, 42, 43, 44, 45 |
| 85 | Jt. Com. Trf. | 4-NCNG | 1, 2, 3, 4, 5, 6, 7, 1, 2, 3, 4, 5, 6, 7, |
| 86 | " Mdse. " | 5-NCNG | 1, 2, 3, 1, 3, 4 |
| 87 | " " " | 11-S. Ry. | 1, 2, 3, 4, 2, 3, 4, 5 |
| 88 | " Com. " | 13-S. Ry. | 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 1, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17 |
| 89 | Mdse. Trf. | 74-G | 1, 2, 4, 6 |
| 90 | Merchandise Tariff | 75-G | 1, 2, 2, 4 |
| 91 | Merchandise Tariff | 76-G | 1, 2, 3, 5, 9, 10 |
| 92 | Merchandise Tariff | 85-G | 1, 2, 3, 4, 1, 4, 6, 7 |
| 93 | Merchandise Tariff | 86-G | |
| 94 | Merchandise Tariff | 87-G | |
| 95 | Merchandise Tariff | 9-V | 1, 6 |
| 96 | Special Com. Tariff | 19-Y | 1, 2, 3, 4, 12, 14, 15, 16 |
| 97 | Flour Specials | 3 | 1, 2, 3, 4, 5, 1, 4, 14, 15, 16 |
| 98 | Flour Tariff | 3 | 1, 2, 3, 4, 5, 6, 7, 8, 15, 16, 17, 21, 24, 25, 26, 27 |
| 99 | Fruit Specials | 4 | 1, 2, 3, 4, 5, 6, 7, 1, 9, 10, 11, 15, 16, 17 |

| C. R. C. No. | Tariff No. | Supplements. C. R. C. No. | Tariff No. |
|-----------------|------------------------|------------------------------|---|
| 100 | Fruit Tariff | 4 | 1, 2, 3. |
| 101 | Grain Specials | 4 | 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, |
| 102 | Grain Tariff | 4 | 1, 2, 3, 4, 5, 6, 7, |
| 103 | Hay & Straw Spl. | 3 | 1, 2, 3, 4, 5, 6, 7, 8, 9, |
| 104 | Hay & Straw Tariff | 6 | 1, 2, 3, 4, |
| 105 | Ice Specials | 3 | 1, 2, 3, 4, |
| 106 | Ice Tariff | 8 | 1, 2, |
| 107 | Live Stock Specials | 3 | 1, 2, 3, 4, 5, 6, 7, |
| 108 | Live Stock Tariff | 6 | 1, 2, 3, 4, 5, 6, 7, |
| 109 | Lumber Specials | 3 | 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, |
| 110 | Lumber Tariff | 3 | 1, 2, 3, 4, 5, 6, |
| 111 | Ore Specials | 3 | 1, 2, 3, 4, 5, 6, 7, |
| 112 | Ore Tariff | 3 | 1, 2, 3, 4, |
| 113 | Placerville Com. Trf. | 1 | 1, 2, 3, 4, 5, 6, |
| 114 | Switching Tariff | 1 | |
| 115 | Switching Tariff | 2 | |
| 116 | Vegetable Specials | 3 | 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, |
| 117 | Vegetable Tariff | 4 | 1, |
| 118 | Spl. Wine Tariff | 1 | 1, 2, 3. |
| 119 | Spl. Wine Tariff | 2 | 1, 2, 3, 4, 5, 6, 7, |
| 120 | Spl. Wine Tariff | 3 | 1, 2, 3. |
| 121 | Spl. Wine Tariff | 4 | 1, 2, 3, 4, |
| 122 | Spl. Wine Tariff | 5 | 1, 2, |
| 123 | Spl. Wine Tariff | 6 | 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, |
| 124 | Spl. Wine Tariff | 8 | 1, |
| 125 | Spl. Wine Tariff | 9-A | |
| 126 | Spl. Wine Tariff | 10 | 1, |
| 127 | Wood Specials | 3 | 1, 2, 3, 4, 5, 6, 7, |
| 128 | Wood Tariff | 2 | 1, 2, 3, 4, |
| 129 | Exception Sheet | 2 | 1, |
| 130 | Jt. Special Rate | 153 | 1, 2, |
| 131 | Jt. Special Rate | 157 | 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, |
| 132 | Jt. Special Rate | 162 | 1, 2, |
| 133 | Jt. Special Rate | 189 | 1, |
| 134 | Local Rates of 1894 | | 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15; |
| 135 | Local Rates | 135 | 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 |
| 136 | Local | 138 | 5 |
| 137 | Spel. Frt. Tariff | 24 | 1, 2, 3, |
| 138 | Spel. Frt. Tariff | 214-A | 1, 2, 3, 4, 5, 6, 7 |
| 139 | Special Freight Tariff | 219 | 1, 2, 3, |
| 140 | Special Freight Tariff | 236 | 1, 2, 3, 4 |
| 141 | Special Freight Tariff | 286 | 1, 2, 3, 4 |
| 142 | Special Freight Tariff | 296 | 1, 2, |
| 143 | Special Freight Tariff | 301 | 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 |
| 144 | Special Freight Tariff | 310 | 1, |
| 145 | Special Freight Tariff | 311 | 14 |

| C. R. C. No. | Tariff No. | Supplements. | |
|-----------------|------------------------|--------------|------------|
| | | C. R. C. No. | Tariff No. |
| 146 | Special Freight Tariff | | 312 |
| 147 | Special Freight Tariff | | 314 |
| 148 | Special Freight Tariff | | 315 |
| 149 | Special Freight Tariff | | 338 |
| 150 | Special Freight Tariff | | 341 |
| 151 | Special Freight Tariff | | 342 |
| 152 | Special Freight Tariff | | 343-A |
| 153 | Special Freight Tariff | | 348 |
| 154 | Special Freight Tariff | | 349 |
| 155 | Special Freight Tariff | | 356 |
| 156 | Special Freight Tariff | | 367 |
| 157 | Special Freight Tariff | | 371 |
| 158 | Special Freight Tariff | | 386-A |
| 159 | Special Freight Tariff | | 387-A |
| 160 | Special Freight Tariff | | 388-A |
| 161 | Special Freight Tariff | | 400 |
| 162 | Special Freight Tariff | | 405 |
| 163 | Special Freight Tariff | | 413 |
| 164 | Special Freight Tariff | | 421 |
| 165 | Special Freight Tariff | | 423 |
| 166 | Special Freight Tariff | | 424 |
| 167 | Special Freight Tariff | | 436 |
| 168 | Special Freight Tariff | | 438-A |
| 169 | Special Freight Tariff | | 444 |
| 170 | Special Freight Tariff | | 451 |
| 171 | Special Freight Tariff | | 454-A |
| 172 | Special Freight Tariff | | 457 |
| 173 | Special Freight Tariff | | 528 |
| 174 | Special Freight Tariff | | 541 |
| 175 | Special Freight Tariff | | 542 |
| 176 | Special Freight Tariff | | 543 |
| 177 | Special Freight Tariff | | 544 |
| 178 | Special Freight Tariff | | 545 |
| 179 | Special Freight Tariff | | 546 |
| 180 | Special Freight Tariff | | 547 |
| 181 | Special Freight Tariff | | 549-A |
| 182 | Special Freight Tariff | | 550 |
| 183 | Special Freight Tariff | | 551 |
| 184 | Special Freight Tariff | | 552 |
| 185 | Special Freight Tariff | | 553 |
| 186 | Special Freight Tariff | | 554 |
| 187 | Special Freight Tariff | | 555 |
| 188 | Special Freight Tariff | | 559 |
| 189 | Special Freight Tariff | | 577 |
| 190 | Special Freight Tariff | | 591 |
| 191 | Special Freight Tariff | | 594 |
| 192 | Special Freight Tariff | | 597 |
| 193 | Special Freight Tariff | | 598 |
| 194 | Special Freight Tariff | | 599 |
| 195 | Special Freight Tariff | | 600 |
| 196 | Special Freight Tariff | | 602 |
| 197 | Special Freight Tariff | | 622 |
| 198 | Special Freight Tariff | | 626 |
| 199 | Special Freight Tariff | | 627 |
| 200 | Special Freight Tariff | | 630 |
| 201 | Special Freight Tariff | | 634 |
| 202 | Special Freight Tariff | | 635 |
| 203 | Special Freight Tariff | | 644 |
| 204 | Special Freight Tariff | | 669 |

| C. R. C. No. | | Tariff No. | Supplements. C. R. C. No. | Tariff No. |
|--------------|------------------------|------------|------------------------------|------------|
| 205 | Special Freight Tariff | 670 | | |
| 206 | Special Freight Tariff | 672 | | |
| 207 | Special Freight Tariff | 674 | | |
| 208 | Special Freight Tariff | 675 | | |
| 209 | Special Freight Tariff | 687 | | |
| 210 | Special Freight Tariff | 688 | | |
| 211 | Special Freight Tariff | 689 | | |
| 212 | Special Freight Tariff | 697 | | |
| 213 | Special Freight Tariff | 703 | | |
| 214 | Special Freight Tariff | 704 | | |
| 215 | Special Freight Tariff | 705 | | |
| 216 | Special Freight Tariff | 706 | | |
| 217 | Special Freight Tariff | 712 | | |
| 218 | Special Freight Tariff | 716 | | |
| 219 | Special Freight Tariff | 718 | | |
| 220 | Special Freight Tariff | 720 | | |
| 221 | Special Freight Tariff | 721 | | |
| 222 | Special Freight Tariff | 722 | | |
| 223 | Special Freight Tariff | 723 | | |
| 224 | Special Freight Tariff | 724 | | |
| 225 | Special Freight Tariff | 725 | | |
| 226 | Special Freight Tariff | 726 | | |
| 227 | Special Freight Tariff | 727-B | | |
| 228 | Special Freight Tariff | 731 | | |
| 229 | Special Freight Tariff | 733 | | |
| 230 | Special Freight Tariff | 734 | | |
| 231 | Special Freight Tariff | 736 | | |
| | Joint | | | |
| 232 | Special Freight Tariff | 737 | | |
| 233 | Special Freight Tariff | 739 | | |
| 234 | Special Freight Tariff | 740 | | |
| 235 | Special Freight Tariff | 741 | | |
| 236 | Special Freight Tariff | 742 | | |
| 237 | Special Freight Tariff | 744 | | |
| 238 | Special Freight Tariff | 748 | | |
| 239 | Spl. Joint Frt. Tariff | 749 | | |
| 240 | Special Freight Tariff | 750 | | |
| 241 | Special Freight Tariff | 751 | | |
| 242 | Special Freight Tariff | 752 | | |
| 243 | Special Freight Tariff | 753-A | | |
| 244 | Special Freight Tariff | 755 | | |
| 245 | Special Freight Tariff | 756 | | |
| 246 | Special Freight Tariff | 757 | | |
| 247 | Special Freight Tariff | 758 | | |
| 248 | Special Freight Tariff | 760 | | |
| 249 | Special Freight Tariff | 761 | | |
| 250 | Special Freight Tariff | 762 | | |
| 251 | Special Freight Tariff | 763 | | |
| 252 | Special Freight Tariff | 765-A | | |
| 253 | Special Freight Tariff | 767 | | |
| 254 | Special Freight Tariff | 768 | | |
| 255 | Special Freight Tariff | 770-A | | |
| 256 | Special Freight Tariff | 772 | | |
| 257 | Special Freight Tariff | 773 | | |
| 258 | Special Freight Tariff | 774 | | |
| 259 | Special Freight Tariff | 776 | | |
| 260 | Special Freight Tariff | 777 | | |
| 261 | Special Freight Tariff | 779 | | |
| 262 | Special Freight Tariff | 781 | | |
| 263 | Special Freight Tariff | 782 | | |

| C. R. C. No. | | Tariff No. | C. R. C. No. | Tariff No. |
|-----------------|---------------------------------|---------------|--------------|------------|
| 264 | Special Freight Tariff | 783 | | |
| 265 | Special Freight Tariff | 785 | | |
| 266 | Spl. Jt. Frt. Tariff | 786 | | |
| 267 | Special Freight Tariff | 788 | | |
| 268 | Special Freight Tariff | 789 | | |
| 269 | Special Freight Tariff | 793 | | |
| 270 | Special Freight Tariff | 794 | | |
| 271 | Special Freight Tariff | 795 | | |
| 272 | Special Freight Tariff | 796 | | |
| 273 | Special Freight Tariff | 797 | | |
| 274 | Special Jt. Frt. Tariff | 801 | | |
| 275 | Special Freight Tariff | 803 | | |
| 276 | Special Freight Tariff | 804 | | |
| 277 | Special Freight Tariff | 805 | | |
| 278 | Special Freight Tariff | 806 | | |
| 279 | Special Freight Tariff | 809 | | |
| 280 | Special Freight Tariff | 810 | | |
| 281 | Special Freight Tariff | 812 | | |
| 282 | Special Freight Tariff | 813 | | |
| 283 | Special Freight Tariff | 814-A | | |
| 284 | Special Freight Tariff | 816 | | |
| 285 | Special Freight Tariff | 817 | | |
| 286 | Special Freight Tariff | 818 | | |
| 287 | Special Freight Tariff | 819-A | | |
| 288 | Special Freight Tariff | 820 | | |
| 289 | Special Freight Tariff | 822 | | |
| 290 | Special Freight Tariff | 823 | | |
| 291 | Special Freight Tariff | 824 | | |
| 292 | Special Freight Tariff | 825-A | | |
| 293 | Special Freight Tariff | 826 | | |
| 294 | Special Freight Tariff | 827 | | |
| 295 | Special Freight Tariff | 828 | | |
| 296 | Special Freight Tariff | 829 | | |
| 297 | Special Freight Tariff | 830 | | |
| 298 | Special Freight Tariff | 831 | | |
| 299 | Special Freight Tariff | 832 | | |
| 300 | Special Freight Tariff | 833 | | |
| 301 | Special Joint Freight Tariff | 834-A | | |
| 302 | Special Freight Tariff | 835 | | |
| 303 | Special Freight Tariff | 837 | | |
| 304 | Special Freight Tariff | 840 | | |
| 305 | Special Freight Tariff | 841 | | |
| 306 | Special Freight Tariff | 842 | | |
| 307 | Special Freight Tariff | 843 | | |
| 308 | Special Freight Tariff | 844 | | |
| 309 | Special Freight Tariff | 845 | | |
| 310 | Special Freight Tariff | 846 | | |
| 311 | Special Freight Tariff | 847 | | |
| 312 | Special Freight Tariff | 848 | | |
| 313 | Special Freight Tariff | 849 | | |
| 314 | Special Freight Tariff | 850 | | |
| 315 | Special Freight Tariff | 851 | | |
| 316 | Special Freight Tariff | 852 | | |
| 317 | Special Freight Tariff | 853 | | |
| 318 | Special Freight Tariff | 854 | | |
| 319 | Special Freight Tariff | 858 | | |
| 320 | Special Freight Tariff | 859 | | |
| 321 | Special Freight Tariff | 860 | | |
| 822 | Special Freight Tariff | 862 | | |
| 323 | Special Freight Tariff | 863 | | |
| 324 | Special Freight Tariff | 864 | | |

| C. R. C. No. | Tariff No. | Supplements. C. R. C. No. | Tariff No. |
|-----------------|-------------------------|------------------------------|------------|
| 325 | Special Freight Tariff | 865-A | |
| 326 | Special Freight Tariff | 866 | |
| 327 | Special Freight Tariff | 867 | |
| 328 | Special Freight Tariff | 868 | |
| 329 | Special Freight Tariff | 869 | |
| 330 | Special Freight Tariff | 870 | |
| 331 | Special Freight Tariff | 871 | |
| 332 | Special Freight Tariff | 872 | |
| 333 | Special Freight Tariff | 873 | |
| 334 | Special Freight Tariff | 876 | |
| 335 | Special Freight Tariff | 878 | |
| 336 | Special Freight Tariff | 879 | |
| 337 | Special Freight Tariff | 880 | |
| 338 | Special Freight Tariff | 881 | |
| 339 | Special Freight Tariff | 883 | |
| 340 | Special Freight Tariff | 884 | |
| 341 | Special Freight Tariff | 885 | |
| 342 | Special Freight Tariff | 886 | |
| 343 | Special Freight Tariff | 887 | |
| 344 | Special Freight Tariff | 888 | |
| 345 | Special Freight Tariff | 889 | |
| 346 | Special Freight Tariff | 890 | |
| 347 | Special Jt. Frt. Tariff | 892 | |
| 348 | Special Freight Tariff | 895 | |
| 349 | Special Freight Tariff | 898 | |
| 350 | Special Freight Tariff | 899 | |
| 351 | Special Freight Tariff | 900 | |
| 352 | Special Freight Tariff | 3-TAG | 1 |
| 353 | Special Freight Tariff | 15-TAG | 1 |
| 354 | Special Freight Tariff | 20-TAG | |
| 355 | Special Freight Tariff | 22-TAG | |
| 356 | Special Freight Tariff | 23-TAG | |
| 357 | Special Freight Tariff | 27-TAG | |
| 358 | Special Freight Tariff | 29-TAG | |
| 359 | Special Freight Tariff | 31-TAG | |
| 360 | Special Freight Tariff | 33-TAG | |
| 361 | Special Freight Tariff | 36-TAG | |
| 362 | Special Freight Tariff | 39-TAG | |
| 363 | Special Freight Tariff | 42-TAG | |
| 364 | Special Freight Tariff | 44-TAG | |
| 365 | Special Freight Tariff | 45-TAG | |
| 366 | Special Freight Tariff | 47-TAG | |
| 367 | Special Freight Tariff | 49-TAG | |
| 368 | Special Freight Tariff | 50-TAG | |
| 369 | Special Freight Tariff | 51-TAG | |
| 370 | Special Freight Tariff | 52-TAG | |
| 371 | Special Freight Tariff | 53-TAG | |
| 372 | Special Freight Tariff | 54-TAG | |
| 373 | Special Freight Tariff | 57-TAG | |
| 374 | Special Freight Tariff | 58-TAG | |
| 375 | Special Freight Tariff | 59-TAG | |
| 376 | Special Freight Tariff | 59½-TAG | |
| 377 | Special Freight Tariff | 60-TAG | |
| 378 | Special Freight Tariff | 61-TAG | |
| 379 | Special Freight Tariff | 62-TAG | |
| 380 | Special Freight Tariff | 63-TAG | |
| 381 | Special Freight Tariff | 64-TAG | |
| 382 | Special Freight Tariff | 65-TAG | |
| 383 | Local Rate | 116 | |
| 384 | Circular GFD | 98 | 1 |
| 385 | " " | 120-J | 1 |

| C. R. C. No. | | Tariff No. | Supplements. C. R. C. No. | Tariff No. |
|--------------|-------------------------|------------|---|--|
| 386 | Circular GFD | 121-B | 1, 2, 3. | 2, 3, 4, |
| 387 | “ “ to 184 inclusive | 124 | 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, | 1-129, 1-132 1-135, 1-139, 1-141, 1-147, 1-148, 1-152, 1-153, 1-158, 1-170, 1-173 |
| 388 | Circular GFD | 186-K | 1, 2, | 3, 5 |
| 389 | “ “ | 188-A | 1, 2, 3, 4, 5, | 76, 80, 89, 104, 105 |
| 390 | “ “ | 195 | | |
| 391 | “ “ | 197-B | 1 | 1 |
| 392 | “ “ | 204-B | | |
| 393 | “ “ | 207-B | | |
| 394 | “ “ | 210 | 1 | 1, |
| 395 | “ “ | 212-B | | |
| 396 | “ “ | 216 | | |
| 397 | Circular Letter | 319 | | |
| 398 | “ “ | 335 | | |

Yours truly,
H. A. JONES. (Signed.)
F. W. G.

GHR.

RECEIVED
May 8, 1909,

BOARD OF RAILROAD COMMISSIONERS.

W. D. WAGNER. (Signed.)

[217-68]

Mr. BOOTH.—Now, if your Honor please, following up that question, we offer to show by this witness that all of the tariffs of the Southern Pacific Company relative to the movement of freight in California, were actually filed with and remained on file with the Commission until the Commission entered an order, which I shall offer, on June 11, 1909, approving the tariffs on file with it.

Mr. HARWOOD.—I object to the offer on the ground that it is immaterial, irrelevant and incompetent.

Mr. BOOTH.—I simply want to connect up the dates. That is all.

The COURT.—The objection will be sustained.

Mr. BOOTH.—Exception.

Exception No. 11.

The defendant then offered a certified copy of the order of the Railroad Commission of the State of California, dated June 11, 1909, approving the rates, fares and charges of the carriers named in the order, to which plaintiff objected on the ground that the order was irrelevant, immaterial and incompetent, to which ruling the defendant excepted.

Exception No. 12.

Said order was in words and figures as follows:
[218—69]

Exhibit No. 3.

SPECIAL MEETING.

Friday, June 11th, 1909.

**OFFICE OF THE BOARD OF RAILROAD
COMMISSIONERS.**

Room 10—Ferry Building San Francisco, Cal.

June 11, 1909.

Pursuant to a resolution adopted by this Commission, June 1st, 1909, the Board met in special session at 10 o'clock A. M. on the above.

PRESENT:

COMMISSIONERS—Irwin—Loveland and Summerland and Secretary Wagner.

On motion of Commissioner Loveland, duly seconded by Commissioner Summerland, the following resolution was unanimously adopted:

WHEREAS, pursuant to and in conformity with a resolution of this Board adopted at the meeting of March 30, 1909, certain carriers to wit:

Northern Electric Railway Company.

Ocean Shore Railway Company.

Los Angeles & Redondo Railway Company.

Nevada & California Railway Company.

Sunset Western Railway Company.

Sunset Railroad Company.

Bay Point & Clayton Railroad Company.

Tonopah & Tidewater Railroad Company.

California Transportation Company.

The Pullman Company.

California Railway.

Los Angeles Pacific Company.

Nevada-California-Oregon & Sierra Valleys
Railway Co.

Pacific Car Service Bureau.

Sierra Railway of California.

South San Francisco Belt Railway Company.

Colusa & Lake Railroad Company.

Arcata & Mad River Railroad Company.

Richmond Belt Railway Company.

Sugar Pine Railway Company.

Los Angeles & San Diego Beach Railway Com-
pany.

Nevada County Narrow Gauge Railroad Com-
pany.

Lake Tahoe Railway & Transportation Com-
pany.

San Diego Southern Railway Company.

Stone Canon Pacific Railroad Company.

Butte County Railroad Company.

San Diego, Cuyamaca & Eastern Railway Com-
pany.

Oregon & Eureka Railroad Company.

Amador Central Railroad Company.

San Francisco, Oakland & San Jose Consol-
idated Railroad Company. [219—70]

Iron Mountain Railway Company.

McCloud River Railroad Company.

Petaluma & Santa Rosa Transportation Com-
pany.

San Pedro, Los Angeles & Salt Lake Railroad
Company.

Atchison, Topeka & Santa Fe Railway Com-
pany.

Diamond & Caldor Railway Company.

Southern Pacific Company.

Western Pacific Railway Company.

Wells Fargo & Company Express.

Trans-Continental Scrip Bureau.

have each filed with this Commission, a printed copy, open to public inspection, of schedules, showing the rates, fares and charges of said carriers respectively for transportation of freight and passengers within this State, between different points on their own routes and between points on their own routes and the routes of any other transportation company, when a through or joint rate is in force, and also a like printed copy of schedules for charges for services in connection with the receipt, delivery, transfer in transit, ventilation, refrigeration, icing, storing and handling of property by said carriers respectively.

IT IS THEREFORE RESOLVED, that the aforesaid schedules be and they are hereby received and filed by this Commission as the rates, fares and charges, and joint rates, fares and charges, to the extent that any thereof are joint, which have been made and filed by said carriers respectively, pursuant to the provisions of Section 18 of the Act of the Legislature of this State approved March 20, 1909; and that the said rates, fares and charges shall be published by said carriers respectively as required by the said Act, and shall be the lawful rates, fares and charges of said carriers respectively, subject to be changed as in said section provided, or by this

Commission pursuant to the provisions of Section 19 of the aforesaid Act.

(Seal) A true copy.

H. G. MATHEWSON, (Signed.)

Assistant Secretary Railroad Commission, State of California. [220—71]

[Testimony of J. K. Butler for Defendant.]

J. K. BUTLER was duly sworn as a witness for defendant, and testified as follows:

The WITNESS.—I am assistant general freight agent of the defendant, and have been connected with the freight department of defendant since 1909 continuously, and for different periods since 1903, and am familiar with the local and through rates involved in this case.

Mr. BOOTH.—Now, if the Court please, I do not want to appear pertinacious in the case, but it appeared to me that perhaps under the general denials it might not be out of the way to offer evidence on the water competition, as to which, on the special defense the Court has ruled against us.

The COURT.—I think that your right would be fully covered in that regard by the orders sustaining the demurrer to your answer.

Mr. BOOTH.—I want to show by this witness that in his opinion as a freight traffic man the rates charged plaintiff's assignors in this case were reasonable in and of themselves for the service performed, and furthermore that the through rate which is contended for here was a rate less than a reasonable rate in and of itself for the service to be performed under the through rate, and was com-

pelled by actual water competition between the port of San Francisco and the ports tributary to Los Angeles.

The COURT.—Why not make that offer?

Mr. BOOTH.—I do make that offer now.

Mr. HARWOOD.—Objected to upon the ground that it is immaterial, irrelevant and incompetent.

The COURT.—In my view, under the provisions of the constitution existing at the time, it is wholly irrelevant. I do not see how it can be considered. The objection will be sustained. Your offer will, of course, stand. [221—72]

Exception No. 13.

Mr. BOOTH.—Exception. That is all with Mr. Butler. If your Honor please, before closing I want to ask the Court for special findings in the case. That is the case for the defendant.

The COURT.—The case involves the same questions that were considered on demurrer, and judgment will have to go for the plaintiff in accordance with the prayer of the complaint.

Order [Settling, etc., Bill of Exceptions].

Thereupon, and on the 2d day of June, 1915, said Court made and entered findings of fact and conclusions of law, thereon, and upon said findings of fact and conclusions of law, and on the 2d day of June, 1913, a judgment was entered against the said defendant and in favor of the said plaintiff, in the sum of \$3,928.01, with interest and costs, as prayed for in the complaint. Within the time allowed by law this bill of exceptions was served on counsel for plaintiff, and was filed herein.

WHEREUPON the Court, being willing to preserve the record in order that its rulings may be reviewed for error, if any there be, hereby certifies that the foregoing bill of exceptions contains all of the evidence offered or admitted upon the trial of said cause, together with the rulings of the Court thereon and the rulings of the Court in admitting or excluding testimony at said trial, and the exceptions taken to the rulings of the Court, and the exceptions allowed thereon.

It is further certified that all of the exhibits offered or admitted in said cause are made a part of the foregoing bill of exceptions.

[Order Settling the Foregoing Bill of Exceptions.]

WHEREUPON, said bill of exceptions is hereby settled, certified and signed, this 14th day of June, 1915, as correct in all respects and presented in due time.

WM. C. VAN FLEET,
Judge of said Court. [222—73]

[Stipulation re Settling, etc., of Bill of Exceptions.]

IT IS HEREBY STIPULATED between counsel for the parties to the action entitled as above, that the foregoing bill of exceptions, as tendered to said Court by the defendant, may by said Court be settled, allowed, certified and signed, without amendment.

Dated this 12th day of June, 1915.

HOEFLER COOK HARWOOD & MOR-
RIS,

ALFRED J. HARWOOD,
Attorneys for Plaintiff.
HENLEY C. BOOTH,
GEORGE D. SQUIRES,
FRANK B. AUSTIN,
Attorneys for Defendant.

[Endorsed]: Filed Jun. 14, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [223
—74]

*In the District Court of the United States in and for
the Northern District of California, Second
Division.*

No. 15,638.

CALIFORNIA ADJUSTMENT COMPANY, a
Corporation,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Defendant.

Petition for Writ of Error.

To the Honorable WILLIAM C. VAN FLEET,
Judge of the Above-entitled Court, and to the
Judge or Judges of Said District Court:

Now comes the above-named defendant, Southern
Pacific Company, a corporation, by Henley C. Booth,

George D. Squires and Frank B. Austin, its attorneys, and says:

That on or about the second day of June, 1915, this Court entered a judgment herein, in favor of plaintiff and against defendant, in which judgment and the proceedings prior thereunto in this cause certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors, which is filed with this petition:

WHEREFORE, defendant prays that a writ of error may issue in its behalf to the United States Circuit Court of Appeals for the Ninth Circuit for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be [224] sent to the said United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 29th day of July, 1915.

HENLEY C. BOOTH,
GEO. D. SQUIRES,
FRANK B. AUSTIN,
Attorneys for Defendant.

[Endorsed]: Filed Jul. 29, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [225]

*In the District Court of the United States in and for
the Northern District of California, First Di-
vision.*

No. 15,638.

CALIFORNIA ADJUSTMENT COMPANY, a
Corporation,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Defendant.

Assignment of Errors.

Now comes the above-named defendant, Southern Pacific Company, a corporation, and in connection with its petition for a writ of error makes the following assignment of errors, which it avers were committed by the Court upon the trial of this cause and in the rendition of the judgment against defendant appearing upon the record herein, to wit:

I.

The Court erred in sustaining and in not overruling plaintiff's demurrer to the first separate defense set forth in defendant's answer and in holding and deciding that the same did not state facts sufficient to constitute a defense or counterclaim.

Said first separate defense was pleaded as follows:

“FOR A FIRST FURTHER AND SEPARATE DEFENSE, defendant states that at all the times mentioned in said complaint it was operating and now operates a steam railroad for the transportation of freight and passengers between the City of San

Francisco and [226*—1†] the City of Los Angeles, which said railroad passed and passes through the points called by the complainant "intermediate." That the City of San Francisco is and at all the times mentioned in said complaint was situated on tide-water, and that defendant's freight terminal in the City of Los Angeles is and at all the times mentioned in said complaint was situated within a comparatively short distance from tide-water, and connected therewith by rail so that common carriers by water competed freely with defendant in the carriage of freight between San Francisco and the City of Los Angeles, of each and all of the properties and commodities described in paragraph IV of each plaintiff's separately stated causes of action. That the effect of such competition by said water carriers is, and was at all the times in said complaint stated, to hold down through rates by rail between San Francisco and Los Angeles, on all of the property and commodities referred to in plaintiff's complaint, and to compel defendant to establish and maintain such through rates in competition with said water carriers and at less than a reasonable rate for the service performed. That the intermediate rates maintained by said defendant out of San Francisco toward Los Angeles by rail, and out of Los Angeles and toward San Francisco by rail, being the rates charged and collected as alleged in plaintiff's complaint, were and are reasonable rates for the service

*Page-number appearing at foot of page of certified Transcript of Record.

†Original page-number appearing at foot of page of Assignment of Errors as same appears in Certified Transcript of Record.

performed, and that to reduce said intermediate rates so as to comply with Section 21 of Article XII of the Constitution of California, as the same existed from 1879 until October 10, 1911, or so as to comply with said Section 21 as amended October 10, 1911, would require defendant to establish such intermediate rates at less than a reasonable compensation for the services performed, and would deprive it of its property without due process of law, and would deprive it of the equal protection of the law, and would [227—2] compel defendant to devote its property to public use at less than a reasonable return on the fair value of its property so devoted.

II.

The Court erred in sustaining and in not overruling plaintiff's demurrer to the second separate defense set forth in defendant's answer and in holding and deciding that the same did not state facts sufficient to constitute a defense or counterclaim.

Said second separate defense was pleaded as follows:

“FOR A SECOND FURTHER AND SEPARATE DEFENSE, defendant states that Section 21, Article XII, California Constitution, as the same existed from the year 1879 to October 10, 1911, is violative of the Constitution of the United States, in that, by attempting to fix rates without a hearing it deprives railroad carriers of due process of law; that if defendant herein is compelled by final judgment herein to refund to plaintiff, on account of the shipments described in plaintiff's complaint as having moved or having been delivered prior to October

10, 1911, all or any of the sums claimed by plaintiff to be excessive charges thereon, the effect and operation of said Section 21, Article XII, California Constitution, will be to have arbitrarily established said forced and compelled rates as intermediate rates against defendant, without due process of law.

III.

The Court erred in sustaining and in not overruling plaintiff's demurrer to the third separate defense set forth in defendant's answer and in holding and deciding that the same did not state facts sufficient to constitute a defense or counterclaim.

Said third separate defense was pleaded as follows:

“FOR A THIRD FURTHER AND SEPARATE DEFENSE, defendant states [228—3] that if said Section 21, Article XII, California Constitution, required the delivery of the goods mentioned in the complaint at the stations of delivery therein mentioned, at charges not exceeding the charges for the transportation of the same property in the same direction to said Los Angeles and San Francisco respectively, it is violative of the Constitution of the United States in that, if enforced as to any or all of plaintiff's separately stated causes of action, it would deprive the defendant of the equal protection of the law by denying it the right to meet the competition of carriers by water, which forces defendant's through rates between San Francisco and Los Angeles below a reasonable basis, as pleaded in defendant's first further and separate defense herein.

IV.

The Court erred in sustaining and in not overruling plaintiff's demurrer to the fourth separate defense set forth in defendant's answer and in holding and deciding that the same did not state facts sufficient to constitute a defense or counterclaim.

Said fourth separate defense was pleaded as follows:

“FOR A FOURTH FURTHER AND SEPARATE DEFENSE, defendant states that as to the shipments specified in plaintiff's separately stated causes of action, that moved or were delivered prior to October 10, 1911, the rates collected for the transportation of each and all of them were rates established by the Railroad Commission of the State of California, pursuant to Section 22, Article XII, of the Constitution of the State of California, as it existed from 1879 to October 10, 1911; and said rates were at the time of their collection and are now conclusively just and reasonable. [229—4]

V.

The Court erred in sustaining and in not overruling plaintiff's demurrer to the fifth separate defense set forth in defendant's answer and in holding and deciding that the same did not state facts sufficient to constitute a defense or counterclaim.

Said fifth separate defense was pleaded as follows:

“FOR A FIFTH FURTHER AND SEPARATE DEFENSE, defendant states that the through rates on defendant's line of railroad from San Francisco to Los Angeles, and from Los Angeles to San Fran-

cisco, on the same kinds and quantities of property as those alleged by plaintiff to have been transported by defendant as stated in plaintiff's complaint to points intermediate San Francisco and Los Angeles, were forced down and compelled by an actual competition with carriers by water between San Francisco and Los Angeles, and that therefore the property transported by defendant to the points intermediate San Francisco and Los Angeles, as alleged in said complaint, was not property of the same class as property of the same physical character and commercially called by the same name, on which lower through rates of transportation by rail between San Francisco and Los Angeles were offered by defendant.

VI.

The Court erred in sustaining and in not overruling plaintiff's demurrer to the sixth separate defense set forth in defendant's answer and in holding and deciding that the same did not state facts sufficient to constitute a defense or counterclaim.

Said sixth separate defense was pleaded as follows:

“FOR A SIXTH FURTHER AND SEPARATE DEFENSE, defendant states that Section 71 of the Public Utilities Act of the State of California, approved December 23, 1911, and effective March 23, 1912, being Chapter 14 of the Statutes of California of the Special Session of 1911, provides as follows: [230—5]

“(a) When complaint has been made to the commission concerning any rate, fare, toll, ren-

tal or charge for any product or commodity furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility has charged an excessive or discriminatory amount for such product, commodity or service, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection; *provided*, no discrimination will result from such reparation.

“(b) If the public utility does not comply with the order for the payment of reparation within the time specified in such order, suit may be instituted in any court of competent jurisdiction to recover the same. All complaints concerning excessive or discriminatory charges shall be filed with the Commission within two years from the time the cause of action accrues, and the petition for the enforcement of the order shall be filed in the court within one year from the date of the order of the commission. The remedy in this section provided shall be cumulative and in addition to any other remedy or remedies in this act provided in case of failure of a public utility to obey an order or decision of the commission.”

That neither plaintiff nor any of its assignors, nor any person for or on behalf of plaintiff or any of its assignors, has at any time applied to the Railroad Commission of the State of California for an order of reparation under the provisions of said section, respecting any one or more or all of the shipments

described in plaintiff's separately stated causes of action, and that therefore each of plaintiff's causes of action as separately stated is barred by the provisions of said Public Utilities Act, and this court has no jurisdiction to give judgment in plaintiff's favor for the whole or any part of all or any of plaintiff's causes of action.

VIII.

The Court erred in sustaining and in not overruling plaintiff's demurrer to the eighth separate defense set forth in defendant's answer and in holding and deciding that the same did not state facts sufficient to constitute a defense or counterclaim.

Said eighth separate defense was pleaded as follows:

“FOR AN EIGHTH FURTHER AND SEPARATE DEFENSE, defendant [231—6] states that as to each and all of the shipments mentioned in plaintiff's complaint, which moved or were delivered after October 10, 1911, the rates charged and collected thereon by defendant were rates which, prior to October 10, 1911, had been established by the Railroad Commission of the State of California, and had not at the time of their collection as aforesaid been in any manner changed.

IX.

The Court erred in sustaining and in not overruling plaintiff's demurrer to the ninth separate defense set forth in defendant's answer and in holding and deciding that the same did not state facts sufficient to constitute a defense or counterclaim.

Said ninth separate defense was pleaded as follows:

“FOR A NINTH FURTHER AND SEPARATE DEFENSE, defendant states that as to all of the shipments mentioned in plaintiff’s complaint, which moved or were delivered prior to October 10th, 1911, the rate charged and collected for each of said shipments, as alleged in said complaint, was the rate published by said defendant and established by the Railroad Commission of the State of California, and as to said rates and each of them there is applicable Section 40 of an Act of the Legislature of the State of California, approved March 19, 1909, providing for the organization of the Railroad Commission of the State of California, and defining its powers and duties, which said section provides:

“In all actions between private parties and transportation companies subject to the provisions of this act, in respect to any rate, charge, order, rule or regulation published as required by this act, the published rate, charge, order, rule or regulation shall be deemed to be just and reasonable, and shall not be open to controversy except in and by way of such proceedings for that purpose before the commission, and the courts as are provided for in this act.”

That said Railroad Commission has never acted on or with respect to the rates collected by defendant for shipments described [232—7] in the complaint as having moved prior to October 10, 1911.

X.

The Court erred in sustaining and in not overrul-

ing plaintiff's demurrer to the tenth separate defense set forth in defendant's answer and in holding and deciding that the same did not state facts sufficient to constitute a defense or counterclaim.

Said tenth separate defense was pleaded as follows:

“FOR A TENTH FURTHER AND SEPARATE DEFENSE, defendant states that each and all of the payments made by plaintiff's assignors to the defendant, as specified and set forth in paragraph IV of each of plaintiff's separately stated causes of action, were made under the following circumstances:

The person, firm or corporation making such payment in each case paid the same without protest, and the amount paid by him to the defendant as alleged in said respective causes of action was collected by defendant in the belief that it was the lawful rate. The amount collected by said defendant in each of said cases was the amount specified by tariffs, which, as to the shipments that moved prior to October 10, 1911, had been established by the Railroad Commission of the State of California, and as to the shipments that moved after October 10, 1911, had been established by said Railroad Commission. The amount so paid was in such case no more than a reasonable compensation for the service performed by the defendant.

XI.

The Court erred in sustaining and in not overruling plaintiff's demurrer to the eleventh separate defense set forth in defendant's answer and in holding

and deciding that the same did not state facts sufficient to constitute a defense or counterclaim.

Said eleventh separate defense was pleaded as follows: [233—8]

“FOR AN ELEVENTH FURTHER AND SEPARATE DEFENSE, defendant states that each of the rates charged and collected by defendant as alleged in plaintiff’s separately stated causes of action was when and as charged and collected a just and reasonable rate for the service performed.

XII.

The Court erred in sustaining and in not overruling plaintiff’s demurrer to the twelfth separate defense set forth in defendant’s answer and in holding and deciding that the same did not state facts sufficient to constitute a defense or counterclaim.

Said twelfth separate defense was pleaded as follows:

“FOR A TWELFTH FURTHER AND SEPARATE DEFENSE, defendant states that the railroad over which the shipments referred to in the complaint were transported was at all times mentioned in the complaint a part of a railroad system operated by defendant, and was engaged in the carriage of freight and passengers in intrastate and interstate commerce. That for recovery of judgment herein plaintiff relies on Section 21 of Article XII of the Constitution of California, and particularly the provision thereof known as the long and short haul clause. That the effect of the application of said clause to California intrastate shipments on defendant’s rail line between San Francisco and Los

Angeles would have been at all times mentioned in the complaint, and would be now, unduly to burden and interfere with the movement of freight passing over said line in intrastate commerce, by subjecting it to a higher freight rate than intrastate freight of the same class and character moving between Los Angeles and San Francisco under the same circumstances. Said result would be brought about by reason of the fact that the through rail rates for freight on defendant's line between San Francisco and [234—9] Los Angeles were, at all times mentioned in the complaint and are now, compelled to be lower than reasonable rail rates for said service and distance, by actual competition by carriers by water between San Francisco and Los Angeles, of the same commodities. Defendant's interstate rail rates for the same commodities to and from Arizona and New Mexico points on defendant's railroad system into and out of San Francisco and Los Angeles were and are not so compelled, but are reasonable rates for the service performed, and therefore to apply said long and short haul clause between San Francisco and Los Angeles would be to subject said interstate commerce to a greater burden than intrastate commerce of the same character between San Francisco and Los Angeles, which said burden would be undue and unjust.

XIII.

The Court erred in sustaining and in not overruling plaintiff's demurrer to the thirteenth separate defense set forth in defendant's answer and in holding and deciding that the same did not state facts

sufficient to constitute a defense or counterclaim.

Said thirteenth separate defense was pleaded as follows:

“FOR A THIRTEENTH FURTHER AND SEPARATE DEFENSE, defendant states that neither plaintiff nor any of its assignors suffered pecuniary loss or damage by or as a direct result of any of the matters, facts, or things pleaded in plaintiff’s separately stated causes of action. [235—10]

XIII.

The Court erred in overruling defendant’s motion for a nonsuit interposed by defendant at the close of the plaintiff’s evidence for the reasons set forth in said written motion for a nonsuit which was and is as follows: [236—11]

In the District Court of the United States, in and for the Northern District of California. . . .

No. 15,638.

CALIFORNIA ADJUSTMENT COMPANY, a Corporation,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
Defendant.

Motion for Nonsuit.

Now comes the defendant above named, and after the close of said plaintiff’s case, and before submitting evidence on the denials and affirmative defenses raised by defendant’s answer, moves the above-

entitled court for a judgment of nonsuit herein, on the following grounds:

First. That it does not appear from the evidence introduced by the plaintiff, taken in connection with the settled admissions made by the pleadings, that the charges collected by defendant and specified in paragraph 4 of each of the separately stated causes of action, and therein called excessive charges, exceeded by any sum whatever the charge then made by defendant for the transportation in the same direction of the same amount and class of property, from the point of shipment described in said paragraph 4 to the more distant point from the point of delivery described in said paragraph 4 of each of said separately stated causes of action.

Second. That it does not appear from the evidence introduced on plaintiff's case, taken in connection with the admissions made [237—12] by defendant's pleadings, that defendant has never been in any case authorized by the Railroad Commission of the State of California to charge less for longer than for shorter distances for the transportation of property; and it does not appear from said evidence, taken in connection with said admissions, that the defendant was not, with respect to all and each of plaintiff's separately stated causes of action, authorized by the Railroad Commission of the State of California to charge less for the longer distance than for the shorter distance for which the respective charges paid by plaintiff's assignor herein were made.

Third. That it does not appear from the evidence introduced on behalf of plaintiff, taken in connection with the admissions made by defendant's pleadings, that said Railroad Commission of the State of California has never prescribed that defendant might in any case, or in any of the cases referred to in plaintiff's separately stated causes of action, be relieved from the prohibition of the Constitution of the State of California directed against charging less for the longer than for the shorter haul.

Fourth. That it affirmatively appears from plaintiff's evidence, taken in connection with the admissions made by defendant's pleadings, that plaintiff's assignors and each of them paid the amounts alleged to have been collected by defendant, voluntarily and without protest.

Fifth. That the plaintiff has failed to show that it, or any one or more of its assignors, suffered pecuniary loss or damage by or as a direct result of any of the matters, facts or things pleaded in plaintiff's separately stated causes of action.

Dated this 5th day of May, 1915.

(Signed.) GEORGE D. SQUIRES,

(Signed.) HENLEY C. BOOTH,

Attorneys for Defendant. [238—13]

XIV.

The Court erred in admitting in evidence Defendant's Exhibit "A" subject to the limitation that columns 10 and 14 of said exhibit, showing the various tariff rates only, should be considered in evidence and not for any other purpose, and in not admitting said exhibit in evidence for all purposes,

plaintiff having waived the objection that the same was not the best evidence and objecting solely on the ground that the same was irrelevant, and immaterial and plaintiff further admitting that the tariff numbers in column 14 of said exhibit are the tariffs which contained the lesser charges for the longer distance referred to in the complaint, that the charges collected by the defendant were made by defendant upon the basis stated in the tariffs in column 10 thereof and that the lesser rates for the longer distance, stated in various causes of action and in the complaint, are based on the tariffs mentioned in column 14 thereof.

Said exhibit "A" was and is in words and figures following, to wit: [239—14]

STATEMENT SHOWING IN DETAIL ITEMS EMBODIED IN THE LAST FILED BY THE CALIFORNIA ADJUSTMENT COMPANY AGAINST THE NATIONAL RAILROAD COMPANY, U.S. SUPREME COURT N. DIST. CALIFORNIA, CASE NO. 15539

| Daybill | Date | No. | From | To | Commodity | Wt. Per 100 lbs. | Specific Rate Collected | Charges Collected | Date Rate Effective If Through Tariff In Col. 10 Should Have Been Filled | Charges Collected Based On Tariff No. | Thru Base S.F. to L.A. or L.A. to S.F. Charge | Date Through Base Effective If Through Tariff Should Have Been Followed | Tariff Reference | Differential Between Through and Through Charged | |
|---------|----------|-------|---------------|-------------|-----------------|------------------|-------------------------|-------------------|--|---------------------------------------|---|---|------------------|--|---------|
| | 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. | 9. | 10. | 11. | 12. | 13. | 14. | 15. |
| | 9-22-11 | 25455 | San Francisco | Fresno | Castings & Ftg. | 4460 | .44 | 19.62 | 6-11-09 | CRC 12 | .37 | 16.72 | 3-22-11 | CRC 134 | 2.90 |
| | 3-25-11 | 31233 | " | Bakersfield | Rope | 2073 | .72 | 14.83 | 6-11-09 | CRC 12 | .42 | 8.82 | 3-22-11 | CRC 134 | 1.11 |
| | 3-16-11 | 17303 | " | " | " | 2102 | .72 | 15.13 | 6-11-09 | CRC 12 | .42 | 8.93 | 10-10-09 | CRC 134 | 1.26 |
| | 1-24-11 | 23746 | " | " | " | 7042 | .72 | 50.70 | 6-11-09 | CRC 12 | .42 | 29.96 | 10-10-09 | CRC 134 | 75.74 |
| | 1-20-11 | 1244 | Drum St. | Fresno | Rice | 39400 | .36 | 141.84 | 6-11-09 | CRC 12 | .27 | 108.35 | 10-10-09 | CRC 134 | 33.49 |
| | 1-12-11 | 716 | " | " | " | 40200 | .36 | 144.72 | 6-11-09 | CRC 12 | .27 | 110.55 | 10-10-09 | CRC 134 | 34.17 |
| | 2-18-11 | 493 | " | " | " | 40000 | .36 | 144.00 | 6-11-09 | CRC 12 | .27 | 110.00 | 10-10-09 | CRC 134 | 34.00 |
| | 9-23-11 | 2828 | " | " | " | 40000 | .36 | 144.00 | 6-11-09 | CRC 12 | .27 | 110.00 | 3-22-11 | CRC 134 | 34.00 |
| | 8- 8-11 | 8987 | " | " | Pipe & Ftg. | 4060 | .44 | 17.86 | 6-11-09 | CRC 12 | .37 | 15.22 | 3-22-11 | CRC 134 | 2.64 |
| | 4-19-11 | 21402 | " | Porterville | hdv | 5428 | .61 | 33.11 | 6-11-09 | CRC 12 | .27 | 20.36 | 3-22-11 | CRC 134 | 12.75 |
| | 8-27-11 | 3027 | " | Fresno | Rice | 40000 | .36 | 144.00 | 6-11-09 | CRC 12 | .27 | 110.00 | 3-22-11 | CRC 134 | 34.00 |
| | 8-14-11 | 1513 | " | " | " | 40000 | .36 | 144.00 | 6-11-09 | CRC 12 | .27 | 110.00 | 3-22-11 | CRC 134 | 34.00 |
| | 7- 8-11 | 743 | " | " | " | 40000 | .36 | 144.00 | 6-11-09 | CRC 12 | .27 | 110.00 | 3-22-11 | CRC 134 | 34.00 |
| | 6- 1-11 | 116 | " | " | " | 40000 | .36 | 144.00 | 6-11-09 | CRC 12 | .27 | 110.00 | 3-22-11 | CRC 134 | 34.00 |
| | 4-19-11 | 1526 | " | " | " | 40000 | .36 | 144.00 | 6-11-09 | CRC 12 | .27 | 110.00 | 10-10-09 | CRC 134 | 34.00 |
| | 3-14-11 | 902 | " | " | " | 40000 | .36 | 144.00 | 6-11-09 | CRC 12 | .27 | 110.00 | 10-10-09 | CRC 134 | 34.00 |
| | 1-18-11 | 17671 | " | Porterville | editors & Print | 2803 | .61 | 17.10 | 6-11-09 | CRC 12 | .37 | 10.51 | 10-10-09 | CRC 134 | 6.59 |
| | 9- 1-11 | 732 | " | Fresno | Pipe & Ftg. | 11382 | .44 | 50.08 | 6-11-09 | CRC 12 | .37 | 42.68 | 3-22-11 | CRC 134 | 7.40 |
| | 10- 4-11 | 640 | Leellie | Banger | Salt | 30070 | .18 | 55.63 | 6-11-09 | CRC 12 | .15 | 45.11 | 8-15-10 | CRC 84 | 10.52 |
| | 3-31-11 | 261 | Crockett | " | Sugar | 40400 | .36 | 144.00 | 6-11-09 | CRC 12 | .27 | 111.10 | 3-22-11 | CRC 134 | 34.00 |
| | 8-29-11 | 2628 | Paraffin | Fresno | Roofing | 46534 | .36 | 144.00 | 6-11-09 | CRC 12 | .27 | 127.97 | 3-22-11 | CRC 134 | 34.00 |
| | 6- 8-11 | 1245 | " | " | " | 30062 | .36 | 144.00 | 6-11-09 | CRC 12 | .27 | 82.67 | 3-22-11 | CRC 134 | 25.55 |
| | 4- 1-11 | 65 | Livoy | Banger | Sulphur | 35000 | .21 | 63.75 | 6-11-09 | CRC 12 | .15 | 52.50 | 6-29-08 | CRC 84 | 11.25 |
| | 9-18-11 | 14005 | Los Angeles | Fresno | Lumber | 8560 | .63 | 53.93 | 2-15-11 | X CRC 134 | .37 | 32.11 | 3-22-11 | CRC 134 | 21.82 |
| | 7-27-11 | 22943 | " | " | Honey Bx Lbr. | 2010 | .63 | 12.66 | 2-15-11 | X CRC 134 | .42 | 8.54 | 3-22-11 | CRC 134 | 4.12 |
| | 1-30-11 | 22157 | " | " | Roofing | 37800 | .56 | 211.68 | 10-10-09 | CRC 134 | .77 | 103.95 | 10-10-09 | CRC 134 | 107.73 |
| | 4- 1-11 | 203 | " | " | Sweeping Comp. | 8880 | .74 | 65.72 | 2-15-11 | X CRC 134 | .48 | 43.08 | 3-22-11 | CRC 134 | 22.64 |
| | 8- 9-11 | 7965 | " | " | Gasoling Eng. | 5750 | .79 | 45.43 | 2-15-11 | X CRC 134 | .60 | 34.51 | 3-22-11 | CRC 134 | 10.92 |
| | 8-18-11 | 15444 | " | " | Bugs & Shafts | 4350 | 1.18 | 51.55 | 2-15-11 | X CRC 134 | .90 | 39.15 | 3-22-11 | CRC 134 | 19.40 |
| | 8-15-11 | 11920 | " | Tehachapi | Flour | 30144 | .30 | 90.43 | 8- 3-10 | CRC 805 | .22 | 67.82 | 8- 3-10 | CRC 805 | 22.61 |
| | 1-24-11 | 17426 | " | " | Soap | 2925 | .61 | 17.84 | 10-10-09 | CRC 134 | .37 | 10.97 | 10-10-09 | CRC 134 | 6.87 |
| | 6- 8-11 | 5732 | " | Fresno | Corrug. Iron | 2970 | .53 | 15.73 | 2-15-11 | X CRC 134 | .37 | 11.13 | 3-22-11 | CRC 134 | 4.60 |
| | 1-27-11 | 23037 | " | Tehachapi | Sugar | 3529 | .53 | 18.70 | 2-15-11 | X CRC 134 | .37 | 13.23 | 3-22-11 | CRC 134 | 3.47 |
| | 3-30-11 | 25638 | " | Tehachapi | Soap | 3630 | .53 | 19.24 | 2-15-11 | X CRC 134 | .37 | 13.61 | 3-22-11 | CRC 134 | 5.63 |
| | 3- 1-11 | 776 | Oiant | " | Explosives | 31077 | 1.08 | 335.85 | 6-11-09 | CRC 134 | .60 | 186.58 | 3-22-11 | CRC 134 | 149.27 |
| | 2-21-11 | 232 | " | " | " | 575 | 2.16 | 12.42 | 6-11-09 | CRC 134 | .20 | 6.90 | 10-10-09 | CRC 134 | 5.52 |
| | 12-11 | 14476 | San Francisco | Mojave | Beer | 26350 | .37 | 98.81 | 4-20-09 | CRC 84 | .25 | 65.87 | 7-11-09 | CRC 84 | 32.94 |
| | 8-16-11 | 19866 | " | " | " | 24000 | .37 | 90.00 | 4-20-09 | CRC 84 | .25 | 60.00 | 7-11-09 | CRC 84 | 30.00 |
| | 4-21-11 | 25018 | " | " | " | 25100 | .37 | 94.13 | 4-20-09 | CRC 84 | .25 | 62.76 | 7-11-09 | CRC 84 | 31.37 |
| | 7- 7-11 | 5641 | " | " | " | 27600 | .37 | 103.50 | 4-20-09 | CRC 84 | .25 | 69.00 | 7-11-09 | CRC 84 | 34.50 |
| | 4- 4-11 | 5165 | " | " | " | 25000 | .37 | 93.75 | 4-20-09 | CRC 84 | .25 | 62.50 | 7-11-09 | CRC 84 | 31.25 |
| | 7-18-11 | 20130 | " | " | " | 29400 | .37 | 110.25 | 4-20-09 | CRC 84 | .25 | 73.50 | 7-11-09 | CRC 84 | 36.75 |
| | 8-11-11 | 16814 | Los Angeles | Tehachapi | Sugar | 1512 | .53 | 8.01 | 2-15-11 | X CRC 134 | .37 | 5.67 | 3-22-11 | CRC 134 | 2.34 |
| | 8-20-11 | 25021 | " | Delano | Galvanized Iron | 2475 | .55 | 13.61 | 2-15-11 | X CRC 134 | .37 | 9.28 | 3-22-11 | CRC 134 | 4.33 |
| | 8-11-11 | 17504 | " | Tehachapi | Tomatoes | 2800 | .53 | 14.84 | 2-15-11 | X CRC 134 | .37 | 10.50 | 10-10-09 | CRC 134 | 4.34 |
| | 8-11-11 | 607 | " | Delano | Sheet Iron | 2985 | .55 | 16.42 | 2-15-11 | X CRC 134 | .37 | 11.20 | 3-22-11 | CRC 134 | 5.22 |
| | 8-11-11 | 9648 | " | Tehachapi | Carbide | 2140 | .58 | 12.41 | 2-15-11 | X CRC 134 | .42 | 9.21 | 10-10-09 | CRC 134 | 3.16 |
| | 3-21-11 | 23535 | " | " | Hooper & Parts | 1845 | .58 | 10.70 | 2-15-11 | X CRC 134 | .42 | 7.84 | 3-22-11 | CRC 134 | 2.86 |
| | 8-20-11 | 25412 | " | Delano | Galvanized Iron | 2284 | .55 | 12.56 | 2-15-11 | X CRC 134 | .37 | 8.57 | 3-22-11 | CRC 134 | 3.99 |
| | 8-20-11 | 434 | " | " | " | 2012 | .55 | 11.07 | 2-15-11 | X CRC 134 | .37 | 7.47 | 3-22-11 | CRC 134 | 3.60 |
| | 8-20-11 | 20117 | " | Tehachapi | Wagon A.D. | 1590 | .58 | 9.32 | 2-15-11 | X CRC 134 | .42 | 6.86 | 3-22-11 | CRC 134 | 2.46 |
| | | | | | TOTAL | | | 3851.24 | | | | 2713.30 | | | 1137.94 |

(X) Rate based on Lathrop Sup. 8 CRC 84 3-22-10
 Y 301 Lathrop to Banger Sup 8 CRC 12 2-15-11

.364

I Case 113

| No. 1111 | | | | | | | | | | | | | | | | |
|----------|-------|---------------|--------------|----------------------------|-------|--------------------------------------|-------------------|---|--|------|---------|--|------------------|---------------------------|--|--|
| Date | No. | From | To | Commodity | Wt. | Specific Rate Collected Per 100 lbs. | Charges Collected | Date Rate Effective If Tariff In Call. 10 Should Have Been Followed | Charges Collected Were Based On Tariff No. | Rate | Charges | Date Through Rate Effective If Through Rate Should Have Been Followed. | Tariff Reference | Should Have Been Followed | | |
| 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. | 9. | 10. | 11. | 12. | 13. | 14. | 15. | | |
| 3-15-11 | 8326 | San Francisco | Mojave | Wine in Glass | 855 | 1.10 | 9.41 | 6-11-09 | CRC 134 | .60 | 5.14 | 10-10-09 | CRC 134 | 4.27 | | |
| 3-11-11 | 12459 | " | Delano | Sheet Iron | 1805 | .62 | 11.19 | 6-11-09 | CRC 12 | .37 | 6.77 | 10-10-09 | CRC 134 | 4.47 | | |
| 5-1-11 | 88 | " | " | " | 2644 | .62 | 16.39 | 6-11-09 | CRC 12 | .37 | 11.02 | 3-22-11 | CRC 134 | 5.37 | | |
| 5-15-11 | 18041 | " | " | Pipe | 1700 | .62 | 10.54 | 6-11-09 | CRC 12 | .37 | 6.38 | 3-22-11 | CRC 134 | 4.78 | | |
| 5-17-11 | 13218 | Los Angeles | San Luis Ob. | Tank Iron | 87800 | .27 | 241.45 | 3-22-11 | CRC 134 | .17 | 153.65 | 1-25-11 | CRC 84 | 87.80 | | |
| 5-4-11 | 2549 | " | " | " | 97900 | .27 | 269.23 | 3-22-11 | CRC 134 | .17 | 171.33 | 1-25-11 | CRC 84 | 97.78 | | |
| 3-25-11 | 23280 | " | Bakersfield | Working Brle. | 6580 | .58 | 38.16 | 2-15-11 | XCRC 134 | .42 | 27.48 | 3-22-11 | CRC 134 | 10.68 | | |
| 5-8-11 | 5136 | " | San Luis Ob. | Tank Iron | 77400 | .27 | 212.85 | 3-22-11 | CRC 134 | .17 | 135.45 | 1-25-11 | CRC 134 | 77.40 | | |
| 2-13-11 | 9540 | " | Exeter | St. Riv. Pipe | 20000 | .56 | 112.00 | 10-10-09 | CRC 134 | .27 | 55.00 | 10-10-09 | CRC 134 | 57.00 | | |
| 7-24-11 | 19525 | " | San Luis Ob. | Bar Iron | 36000 | .27 | 99.00 | 3-22-11 | CRC 134 | .15 | 54.00 | 3-22-10 | CRC 84 | (X) 45.00 | | |
| 5-12-11 | 9147 | " | Bakersfield | Oil Well Sup. | 36380 | .40 | 145.52 | 2-15-11 | XCRC 134 | .30 | 109.14 | 3-22-11 | CRC 134 | 36.38 | | |
| 8-18-11 | 14667 | " | " | Boiler Shell | 8250 | .67 | 55.28 | 2-15-11 | XCRC 134 | .60 | 49.51 | 3-22-11 | CRC 134 | 5.77 | | |
| 8-29-11 | 1014 | Emery | Fresno | Bar Iron | 43062 | .36 | 155.03 | 6-11-09 | CRC 12 | .15 | 64.60 | 3-22-10 | CRC 84 | 90.43 | | |
| 8-26-11 | 1075 | " | " | " | 38030 | .36 | 136.91 | 6-11-09 | CRC 12 | .15 | 57.05 | 3-22-10 | CRC 84 | 79.86 | | |
| 2-1-11 | 57 | Los Angeles | Bakersfield | Oil Well Sup. | 41140 | .50 | 205.70 | 10-10-09 | CRC 134 | .30 | 123.42 | 10-10-09 | CRC 134 | 82.28 | | |
| 5-13-11 | 10308 | " | " | " | 32400 | .40 | 129.60 | 2-15-11 | XCRC 134 | .30 | 97.20 | 2-15-11 | CRC 134 | 32.40 | | |
| 4-22-11 | 14895 | " | " | Working Brle. | 3940 | .58 | 22.85 | 2-15-11 | XCRC 134 | .42 | 16.74 | 3-22-11 | CRC 134 | 6.11 | | |
| 7-27-11 | 25543 | " | " | " | 6720 | .58 | 38.98 | 2-15-11 | XCRC 134 | .42 | 28.57 | 3-22-11 | CRC 134 | 10.41 | | |
| 8-10-11 | 5801 | " | " | " | 4920 | .58 | 28.54 | 2-15-11 | XCRC 134 | .42 | 28.92 | 3-22-11 | CRC 134 | 7.62 | | |
| 3-24-11 | 20486 | " | " | Sucker Rods | 10550 | .53 | 55.92 | 2-15-11 | XCRC 134 | .37 | 39.57 | 3-22-11 | CRC 134 | 16.35 | | |
| 3-24-11 | 22188 | " | " | Pig Iron | 5535 | .58 | 32.10 | 2-15-11 | XCRC 134 | .42 | 23.52 | 3-22-11 | CRC 134 | 8.58 | | |
| 7-25-11 | 28436 | San Francisco | " | Beer | 24700 | .37 | 92.63 | 3-22-10 | CRC 84 | .25 | 61.76 | 3-22-10 | CRC 84 | 30.87 | | |
| 7-12-11 | 13169 | " | " | " | 24700 | .37 | 92.63 | 3-22-10 | CRC 84 | .25 | 61.76 | 3-22-10 | CRC 84 | 30.87 | | |
| 6-12-11 | 14480 | " | " | " | 24600 | .37 | 92.25 | 3-22-10 | CRC 84 | .25 | 61.60 | 3-22-10 | CRC 84 | 30.65 | | |
| 6-3-11 | 3914 | " | " | " | 24700 | .37 | 92.63 | 3-22-10 | CRC 84 | .25 | 61.76 | 3-22-10 | CRC 84 | 30.87 | | |
| 6-7-11 | 8270 | " | " | " | 24500 | .37 | 91.88 | 3-22-10 | CRC 84 | .25 | 61.26 | 3-22-10 | CRC 84 | 30.62 | | |
| 6-26-11 | 25253 | " | " | " | 25140 | .37 | 94.28 | 3-22-10 | CRC 84 | .25 | 62.66 | 3-22-10 | CRC 84 | 31.62 | | |
| 5-9-11 | 10763 | " | " | " | 24500 | .37 | 91.88 | 3-22-10 | CRC 84 | .25 | 61.26 | 3-22-10 | CRC 84 | 30.62 | | |
| 4-29-11 | 35250 | " | " | " | 24700 | .37 | 92.63 | 3-22-10 | CRC 84 | .25 | 61.76 | 3-22-10 | CRC 84 | 30.87 | | |
| 6-29-11 | 35827 | " | " | " | 24900 | .37 | 93.37 | 3-22-10 | CRC 84 | .25 | 62.24 | 3-22-10 | CRC 84 | 31.13 | | |
| 6-24-11 | 31636 | " | " | " | 24800 | .37 | 93.00 | 3-22-10 | CRC 84 | .25 | 62.00 | 3-22-10 | CRC 84 | 31.00 | | |
| 6-17-11 | 23737 | " | " | " | 24500 | .37 | 91.88 | 3-22-10 | CRC 84 | .25 | 61.26 | 3-22-10 | CRC 84 | 30.62 | | |
| 2-15-11 | 10991 | Los Angeles | " | Sucker & Fitgs. | 10785 | .53 | 57.16 | 2-15-11 | XCRC 134 | .37 | 40.44 | 3-22-11 | CRC 134 | 16.72 | | |
| 11-11-11 | 8182 | " | " | Oil Well Sup. | 37380 | .40 | 149.52 | 2-15-11 | XCRC 134 | .30 | 112.34 | 3-22-11 | CRC 134 | 37.38 | | |
| 11-1-11 | 2666 | " | Exeter | Tank Iron | 13550 | .57 | 77.24 | 2-15-11 | XCRC 134 | .37 | 50.82 | 3-22-11 | CRC 134 | 26.42 | | |
| 3-1-11 | 2242 | San Francisco | Delano | Sheet Iron | 1830 | .62 | 11.35 | 6-11-09 | CRC 12 | .37 | 6.87 | 3-22-11 | CRC 134 | 4.48 | | |
| 3-1-11 | 10298 | " | " | Iron & Fitgs. | 2423 | .62 | 15.02 | 6-11-09 | CRC 12 | .37 | 9.09 | 3-22-11 | CRC 134 | 5.93 | | |
| 4-15-11 | 20655 | " | " | Iron | 2080 | .62 | 12.90 | 6-11-09 | CRC 12 | .37 | 7.81 | 3-22-11 | CRC 134 | 5.09 | | |
| 1-29-12 | 32912 | " | Mojave | Beer | 24000 | .37 | 90.00 | 3-22-10 | CRC 84 | .25 | 60.00 | 3-22-10 | CRC 84 | 30.00 | | |
| 4-30-12 | 25000 | " | " | " | 25000 | .37 | 93.75 | 3-22-10 | CRC 84 | .25 | 62.50 | 3-22-10 | CRC 84 | 31.25 | | |
| 12-24-11 | 31017 | " | " | Whiskey | 1000 | 1.03 | 10.30 | 6-11-09 | CRC 134 | .48 | 4.80 | 3-22-11 | CRC 134 | 5.50 | | |
| 11-4-11 | 3645 | " | " | Beer | 24350 | .37 | 91.31 | 3-22-10 | CRC 84 | .25 | 60.87 | 3-22-10 | CRC 84 | 30.44 | | |
| 8-4-11 | 3900 | " | " | " | 29720 | .37 | 111.45 | 3-22-10 | CRC 84 | .25 | 74.30 | 3-22-10 | CRC 84 | 37.15 | | |
| 2-20-12 | 35063 | " | " | " | 24400 | .37 | 91.50 | 3-22-10 | CRC 84 | .25 | 61.00 | 3-22-10 | CRC 84 | 30.50 | | |
| 2-11-11 | 4353 | Los Angeles | Tehechap. | Refined Oil | 2852 | .58 | 16.54 | 2-15-11 | XCRC 134 | .42 | 12.12 | 3-22-11 | CRC 134 | 4.42 | | |
| 12-1-11 | 99 | " | Fresno | Paper | 40000 | .52 | 208.00 | 2-15-11 | XCRC 134 | .27 | 110.00 | 3-22-11 | CRC 134 | 98.00 | | |
| 6-11-12 | 5500 | " | " | Roofing | 36770 | .43 | 158.11 | 5-27-12 | CRC 1515 | .27 | 101.12 | 5-27-12 | CRC 1515 | 6.99 | | |
| 6-1-12 | 228 | " | " | Bees Wax | 4150 | .79 | 32.79 | 2-15-11 | XCRC 134 | .60 | 24.91 | 3-22-11 | CRC 134 | 7.88 | | |
| 2-19-12 | 12841 | " | " | Boiler over 10 ft. & front | 3095 | .79 | 24.45 | 2-15-11 | XCRC 134 | .60 | 18.57 | 3-22-11 | CRC 134 | 5.88 | | |
| TOTAL | | | | | | | 4277.43 | | | | 2753.14 | | | 1543.96 | | |

(X) Complaint shows through rate 25% Difference \$9.00

X Case 110

Sheet 3.

| Waybill | | | | Commodity | Wt. | Specific Rate Collected | Charges Collected | Date Rate Effective If Tariff In Col. 10 Should Have Been Followed | Charges Collected Were Based On Tariff No. | Thru Base Rate | Base to L.A. or L.A. to S.F. Charges | Date Through Rate Effective If Through Rate Should Have Been Followed | Tariff Reference | Difference Between Specific and Through Charges |
|----------|--------|---------------|--------|-----------------|-------|-------------------------|-------------------|--|--|----------------|--------------------------------------|--|------------------|---|
| Date 1. | No. 2. | From 3. | To 4. | 5. | 6. | 7. | 8. | 9. | 10. | 11. | 12. | 13. | 14. | 15. |
| 8-10-12 | 104 | Paraffin | Fresno | Roefing | 31050 | .36 | 111.78 | 6-11-09 | CRC 12 | .27 1/2 | 85.39 | 3-22-11 | CRC 134 | 26.39 |
| 4-25-12 | 26 | Livny | Sanger | Sulphur | 39680 | .21 1/2 | 84.32 | 6-11-09 | CRC 12 | .15 | 59.52 | 11-28-10 | CRC 84 | 24.80 |
| 10-16-11 | 2718 | Paraffin | Fresno | Roefing | 38749 | .36 | 139.49 | 6-11-09 | CRC 12 | .27 1/2 | 106.55 | 3-22-11 | CRC 134 | 32.94 |
| 11-10-11 | 3022 | " | " | " | 30427 | .36 | 109.54 | 6-11-09 | CRC 12 | .27 1/2 | 85.68 | 3-22-11 | CRC 134 | 23.86 |
| 3-15-12 | 162 | " | " | " | 30102 | .36 | 108.37 | 6-11-09 | CRC 12 | .27 1/2 | 82.78 | 3-22-11 | CRC 134 | 25.59 |
| 1-10-12 | 73 | " | " | " | 30012 | .36 | 108.04 | 6-11-09 | CRC 12 | .27 1/2 | 82.93 | 3-22-11 | CRC 134 | 25.11 |
| 2-26-12 | 40 | Leslie | Sanger | Salt | 32465 | .18 1/2 | 60.00 | 6-11-09 | CRC 12 | .15 | 48.64 | 11-28-10 | CRC 84 | 11.36 |
| 12- 8-11 | 9134 | San Francisco | Sanger | Fencing | 7605 | .49 | 37.26 | 6-11-09 | CRC 12 | .42 1/2 | 32.32 | 3-22-11 | CRC 134 | 4.94 |
| 10-20-11 | 21814 | " | " | Beans | 8000 | .49 | 39.20 | 6-11-09 | CRC 12 | .42 1/2 | 34.00 | 3-22-11 | CRC 134 | 5.20 |
| 12-21-11 | 2175 | " | Fresno | Rice | 40000 | .36 | 144.00 | 6-11-09 | CRC 12 | .27 1/2 | 110.00 | 3-22-11 | CRC 134 | 34.00 |
| 12- 5-11 | 712 | " | " | " | 40000 | .36 | 144.00 | 6-11-09 | CRC 12 | .27 1/2 | 110.00 | 3-22-11 | CRC 134 | 34.00 |
| 11-10-11 | 1312 | " | " | " | 40000 | .36 | 144.00 | 6-11-09 | CRC 12 | .27 1/2 | 110.00 | 3-22-11 | CRC 134 | 34.00 |
| 5- 4-12 | 423 | " | " | " | 40000 | .36 | 144.00 | 6-11-09 | CRC 12 | .27 1/2 | 110.00 | 3-22-11 | CRC 134 | 34.00 |
| 1-19-12 | 1770 | " | " | " | 40000 | .36 | 144.00 | 6-11-09 | CRC 12 | .27 1/2 | 110.00 | 3-22-11 | CRC 134 | 34.00 |
| 11- 4-11 | 4098 | " | " | Metal Lath | 11680 | .41 | 54.90 | 6-11-09 | CRC 12 | .42 1/2 | 49.64 | 3-22-11 | CRC 134 | 5.26 |
| 3-22-12 | 28969 | " | " | St.Pal. & Bush. | 24000 | .33 1/2 | 80.40 | 6-11-09 | CRC 12 | .30 | 72.00 | 3-22-11 | CRC 134 | 8.40 |
| 5- 6-12 | 515 | " | " | Rice | 40000 | .36 | 144.00 | 6-11-09 | CRC 12 | .27 1/2 | 110.00 | 3-22-11 | CRC 134 | 34.00 |
| 9-29-11 | 5837 | " | " | " | 40000 | .36 | 144.00 | 6-11-09 | CRC 12 | .27 1/2 | 110.00 | 3-22-11 | CRC 134 | 34.00 |
| TOTAL | | | | | | | 1941.30 | | | | 1507.05 | | | 434.25 |

RECAPITULATION

| | | | |
|--------|----------|---------|---------|
| Page 1 | 3851.24 | 2713.30 | 1137.94 |
| " 2 | 4297.10 | 2753.14 | 1543.96 |
| " 3 | 1941.30 | 1507.05 | 434.25 |
| TOTAL | 10089.64 | 6973.49 | 3116.15 |

XV.

The Court erred in the rejection of evidence offered by plaintiff upon the trial of said action in the following instances:

(1) The Court erred in sustaining plaintiff's objection to the introduction in evidence by defendant and in excluding from evidence, and in not admitting in evidence a certified copy of an order and decision of the Railroad Commission of the State of California, dated May 20, 1910, made and entered in case No. 110, entitled, "Associated Jobbers of Los Angeles, Complainant, vs. Southern Pacific Company, a Corporation, and Atchison, Topeka & Santa Fe Railway Company, a Corporation, Defendants, and Jobbers and Manufacturers' Association of Stockton, and Traffic Bureau of the Merchants' Exchange of San Francisco, Intervenors." Said order so excluded from evidence, was and is in words and figures following, to wit: [243—18]

BEFORE THE RAILROAD COMMISSION
of the

STATE OF CALIFORNIA.

Case No. 110.

ASSOCIATED JOBBERS OF LOS ANGELES,
Complainant,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
and ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY, a Corporation,
Defendants.

JOBBER AND MANUFACTURERS' ASSOCIATION OF STOCKTON AND TRAFFIC BUREAU OF THE MERCHANTS' EXCHANGE OF SAN FRANCISCO,

Intervenors.

Submitted September 1, 1910. Decided December 20, 1910.

Messrs. KUSTER, LOEB & LOEB, for Complainant.

WM. F. HERRIN and C. W. DURBROW, for Defendant Southern Pacific Company.

E. W. CAMP and U. T. GLOTFELTER, for Defendant Atchison, Topeka and Santa Fe Railway Company.

C. L. NEUMILLER, for Jobbers and Manufacturers' Association of Stockton.

WM. R. WHEELER & SETH MANN, for Traffic Bureau of the Merchants' Exchange.

REPORT AND OPINION OF THE COMMISSION.

The complainant complains that the rate of freight governed by class rates, ranging from first class of Class E of current [244] tariffs, and upon the commodity of beer in carload lots from Los Angeles to the following points or stations in the San Joaquin Valley:

| | |
|----------|-------------|
| Coalinga | Hanford |
| Goshen | Exeter |
| Tulare | Porterville |
| Oil City | Bakersfield |
| Olig | McKittrick |
| Fresno | Visalia |

and all intermediate points therewith, are both un-

reasonable and discriminatory.

The unreasonableness appears to be measured by rates applying from San Francisco to equidistant points with the points or stations complained of, as well as by comparison with rates applying for equal mileages between other points similarly situated.

The second count, discrimination, is based upon the defendants' rates from San Francisco; the complainant contending that her merchants are unable to meet San Francisco at or near the halfway point between the two cities by reason of discriminatory rates which give undue preference and advantage to San Francisco.

The Tariff Bureau of the Merchants' Exchange of San Francisco intervenes upon the second count, and contends that complainants are not discriminated against, but, considering physical conditions, rates are in favor of complainant and to the prejudice of San Francisco.

The Jobbers and Manufacturers' Association of Stockton intervenes and asks consideration in any adjustment that may be made, but particularly differentials existing between San Francisco and Stockton and the points complained of, and that Stockton be given the full benefit of the local rates between San Francisco and Stockton and rates from Stockton to the points involved, which [245] are as follows:

| In cents per 100 pounds: | | | | |
|--------------------------|-----|-----|-----|-----|
| 1 | 2 | 3 | 4 | 5 |
| .10 | .10 | .09 | .09 | .07 |

and other class rates, as shown by current tariffs. Short line distance from San Francisco to Stockton appears to be seventy-eight (78) miles, and in con-

sidering established class rates as above for a distance of seventy-eight (78) miles they can at least be considered unreasonably low as compared with other rates; for instance, from Stockton to a point seventy-eight (78) miles south, Los Banos, the rates are

| In cents per 100 pounds: | | | | | | | | | |
|--------------------------|-----|-----|-----|-----|-----|-----|------|-----|------|
| 1 | 2 | 3 | 4 | 5 | A | B | C | D | E |
| .45 | .41 | .39 | .35 | .30 | .30 | .17 | .15½ | .12 | .11¾ |

and are certainly forced rates brought by keen water competition, as originally we find that the rates between San Francisco and Stockton were much higher.

The differentials that now exist and have existed for a number of years in the past between San Francisco, Stockton, and San Joaquin Valley points, are much lower than the forced rates, being as follows:

| In cents per 100 pounds: | | | | |
|--------------------------|-----|-----|-----|-----|
| 1 | 2 | 3 | 4 | 5 |
| .05 | .07 | .07 | .07 | .04 |

and still less on other carload class rates. The record is not clear as to the reason for the existing low differential, except that it is to be gathered that they were made lower than the forced local rates in order to prevent water carriers operating between San Francisco and Stockton in participating in freight traffic between San Francisco and points in the San Joaquin Valley south [246] of Stockton in connection with rail carriers Stockton south. But it is apparent that such danger does not exist to-day, and while it is the custom for reasonable differentials to exist between commercial cities, it is fair to say that such low existing differentials would

not have existed were it not for the reason of the low forced water competitive class rates. Stockton merchants should have the full benefit of a forced rate condition between San Francisco and Stockton as well as San Francisco merchants, and the Stockton rates to the points complained of herein should be lower to the extent of the existing class rates between San Francisco and Stockton. Stockton merchants complain also that Sacramento merchants have an advantage in differentials to points in the San Joaquin Valley. We find that Sacramento, like Stockton, enjoys water competitive rates and the distance by water and water service between San Francisco and Sacramento and Stockton are on a fair parity; however, the adjustment outlined herein as between San Francisco and Stockton to points in controversy will raise the now existing discrimination between Sacramento and Stockton and the points complained of.

We now come to the contention of the merchants of Los Angeles. Class rates from San Francisco to Berenda, a point one hundred and sixty-eight (168) miles from San Francisco, are as follows:

| In cents per 100 pounds: | | | | | | | | | |
|--------------------------|-----|-----|-----|------|------|------|------|------|-----|
| 1 | 2 | 3 | 4 | 5 | A | B | C | D | E |
| .47 | .42 | .38 | .35 | .29½ | .27½ | .19½ | .17¼ | .15¼ | .13 |

Class rates from Los Angeles to Bakersfield, a point equal distant from Los Angeles (168 miles), are as follows:

| In cents per 100 pounds: | | | | | | | | | |
|--------------------------|-----|-----|-----|-----|-----|------|------|------|------|
| 1 | 2 | 3 | 4 | 5 | A | B | C | D | E |
| .71 | .68 | .64 | .61 | .48 | .50 | .30¾ | .27½ | .22½ | .22½ |

The percentages in favor of the former range from 51 per cent first class to 73 per cent Class E, and while the rates from San Francisco to Berenda are much lower than the rates from Los Angeles to Bakersfield, the former may be considered to some extent forced rates, and taking into consideration all the conditions surrounding the compelling features of the former rates, we are of opinion that the present rates from Los Angeles to Bakersfield and other points north thereof in the San Joaquin Valley, mentioned herein, are excessive. This opinion is further corroborated by the fact that the defendants themselves so considered them in contemplating an adjustment of rates to and from the points in controversy, and were only prevented from making their rates effective upon that occasion by objection on the part of the San Francisco merchants.

The San Francisco intervenors made much of the increased cost of operation over the grades, particularly Tehachapi grade from Los Angeles to Bakersfield. In the question of the cost of operation, while a great mass of evidence was submitted, it was shown that the Tehachapi line was operated jointly by the Santa Fe and the Southern Pacific, thus reducing the cost to each line. Commissioner Lane of the Interstate Commerce Commission, in Case No. 2839, involving rates between Sacramento, Reno and Lovelock, expressed our views very aptly. He says: "We do not recognize the right of a carrier to single out a piece of expensive road and make the local traffic thereon bear an undue portion of the expense of its maintenance or of its construction. A road is

built and operated as a whole, and local rates are not to be made with respect to the difficulties of each particular portion, charging the cost of a bridge to the traffic of one section or the cost of a tunnel to traffic between its two mouths. * * * If the [248] position of the defendant were followed by the carriers generally it would result in rates that would vary from mile to mile as the cost of road per mile varies." And, consequently, we give no important consideration to either the cost of operating the terminals of San Francisco upon which so much stress was laid, including the bay and Dumbarton cutoff, or the grades between Los Angeles and Bakersfield, except that one in a measure offsets the other.

In reaching our conclusions we are cognizant of the fact that the Santa Fe line from Los Angeles to the San Joaquin Valley is of greater length than its competitor, but we have considered the request of the Santa Fe that it be considered upon the same mileage as the Southern Pacific. San Joaquin Valley is a very rich territory and is growing rapidly, and Los Angeles, San Francisco and Stockton must be considered not only as sources of supply for the Valley, but as markets for its products as well.

IT IS HEREBY ORDERED, that the defendants make effective, not later than February 15, 1911, tariffs in keeping with this opinion, fixing class rates from Los Angeles to Bakersfield, as follows:

Southern Pacific Company vs.

In cents per 100 pounds:

| | 1 | 2 | 3 | 4 | 5 | A | B | C | D | E |
|--|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| | .67 | .62 | .58 | .53 | .44 | .40 | .27 | .24 | .21 | .17 |

And from Los An-

geles to Visalia

| | | | | | | | | | | |
|--|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| | .71 | .66 | .61 | .57 | .47 | .44 | .30 | .26 | .22 | .19 |
|--|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|

And from Los An-

geles to Fresno

| | | | | | | | | | | |
|--|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| | .79 | .74 | .68 | .63 | .52 | .48 | .33 | .29 | .25 | .21 |
|--|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|

graduating the rates between the above points.

Rates from Los Angeles, San Francisco, and Stockton to points on branch lines [249] will leave the main lines between Kern Junction, Bakersfield, and south of Fresno shall be fixed in the same manner, *i. e.*, if the rates from San Francisco to a branch line point is ten cents higher than to the main line junction point then the rate from Los Angeles and Stockton shall also be ten cents higher than the junction or main line point. From Stockton south the defendants reduce their rates so as to give Stockton the benefit of a differential under San Francisco equal to the existing class rates from San Francisco to Stockton upon all classes to all points involved. The commodity rate complained of was beer. Without giving definite figures the carriers will arrange their tariffs in such a manner as to eliminate the present discrimination, using as a basis the adjustment outlined for class rates.

(Signed) A. C. IRWIN,

Commissioner.

THEODORE SUMMERLAND,

Commissioner.

Attest: W. D. WAGNER,

Secretary. [250]

(2) The Court erred in sustaining plaintiff's objection to the notice to present list of deviations and justify exceptions made and entered by the Railroad Commission in Case No. 214, entitled "In the matter of the provisions of Section 21 of Article XII of the Constitution of California, relating to long and short hauls and through rates exceeding aggregate of intermediate rates," offered in evidence by defendant, dated October 26, 1911, upon the ground that the same was immaterial, irrelevant and incompetent and did not show that the Railroad Commission, after investigation, had granted relief, plaintiff expressly waiving the objection that the copy of the notice offered by the defendant was not certified. The Court also erred in excluding said document from evidence and in not admitting the same and in ruling that the same was incompetent, irrelevant and immaterial. Said document so excluded from evidence was and is in words and figures following, to wit: [251—25]

Exhibit No. 4.

BEFORE THE RAILROAD COMMISSION OF
THE STATE OF CALIFORNIA.

No. 214.

In the Matter of the Provisions of Section 21 of
Article XII of the Constitution of California,
Relating to Long and Short Hauls and
Through Rates Exceeding Aggregate of In-
termediate Rates.

NOTICE TO PRESENT LIST OF DEVIATIONS
AND TO JUSTIFY EXCEPTIONS.

To All Railroad and Other Transportation Companies Within the State of California :

You and each of you are hereby notified that at a regular meeting of the Railroad Commission of the State of California, held at the office of the commission in the City of San Francisco, State of California, on the 16th day of October, 1911, all the commissioners being present and voting, the following resolution was unanimously adopted :

“Whereas Section 21 of Article XII of the Constitution of California, as amended on October 10, 1911, provides in part as follows :

‘It shall be unlawful for any railroad or other transportation company to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates. *Provided*, however, that upon application to the railroad commission, provided for in this constitution, such company may, in special cases, after investigation, be authorized by such commission to charge less for longer than for shorter distances for the transportation of persons or property, and the railroad commission may from time to time prescribe the extent to which such company may be relieved from

the prohibition to charge less for the longer than for the shorter haul': and, [252—26]

Whereas, most of the railroad and other transportation companies of this State have filed with this commission certain schedules which are not in conformity with said provisions of the constitution of this State, unless authorized by this commission.

“NOW, THEREFORE, BE IT ORDERED, that each railroad and other transportation company which has filed with this commission any schedule containing any rate or fare showing a greater compensation in the aggregate for the transportation of passengers or of like kind of property for a shorter than a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or a greater compensation as a through rate than the aggregate of the intermediate rates, file with this commission on or before the 2d day of January, 1912, a complete list of each rate or charge not in conformity with said provisions of the constitution of this State, unless authorized by this commission, as shown by its schedules of rates and fares on file with this commission, showing in each case the name of the commodity or description of the traffic, or the passenger or other service, the point or points of origin and destination, the highest intermediate rate or fare with the name of the point (in case of long and short haul) or the different intermediate rates (in case of a greater compensation for a through route), and the rate or fare to the more distant point.

“BE IT FURTHER ORDERED, that each of said railroad and other transportation companies present to this commission on or before said 2d day of January, 1912, for examination and investigation by this commission, a new schedule or schedules removing said deviations from the provisions of said section of the constitution of this State, or in case it is desired to justify the same, or any of them, an application or applications to be relieved from the provisions of said section, said application or applications to be in such of the two following forms as may meet the conditions as to which relief [253—27] is sought:

(a) The —— (name of carrier)——, through —— (name of officer or agent making application) ——, its —— (official title of officer or agent) ——, petitions the Railroad Commission of the State of California for authority to establish rates (or fares) for the transportation of —— (name of commodity or description of traffic, or passengers) —— from —— (name of point or points of origin) —— to —— (name of point or points of destination) —— lower than the rates (or fares) concurrently in effect to intermediate points —— (names of all intermediate points) ——; the highest charge at such intermediate points to apply at —— (name of intermediate point) ——, and to be not more than —— (cents per 100 pounds, per ton, per car, or per package, or per passenger) —— in excess of the rates to —— (name of more distant point to which lower rate is proposed) ——.

This application is based upon the desire of

petitioner to meet (by direct haul over a longer line or route, or by water competition), competitive conditions created at ——— (name of more distant point or points at which the lower rates or fares are proposed) ——— by ——— (name of railway, or of regular line of steamers or so-called “tramp vessels”).

(b) Application shall be made in general form the same as (a), but shall request authority to charge a higher rate or fare as the through rate or fare than the aggregate of the intermediate rates or fares. The application shall state clearly the [254—28] reasons in support thereof, and shall specify the extent to which it is desired to make the through rate or fare higher than the aggregate of the intermediate rates or fares.

Separate applications should be made for different situations governed by different rate adjustments or competitive influences. Where the rates or fares are contained in a joint tariff schedule, a petition from the carrier which issued the schedule or from the duly authorized agent, specifying the same by C. R. C. number, may be made on behalf of the carriers lawfully parties to the schedule, and will be held and considered to be on behalf of all carriers concurring in the schedule. Each carrier may file as many applications as are necessary to present properly the several situations as to which it desires relief, and it is desirable that each particular situation be treated by itself. Each application must be certified by the officer or agent making the same.

“AND BE IT FURTHER ORDERED that the Secretary be and he is hereby ordered to serve a copy of that order on each of said railroad and other transportation companies and to notify each of them to comply with all the requirements hereof.”

And you are further notified to comply with each and all requirements of said resolution within the time or times in said resolution specified.

By order of the Commission.

[Seal] (Signed.) CHARLES R. DETRICK,
Secretary.

Dated San Francisco, California, October 26, 1911.

[255—29]

(3) The Court erred in sustaining plaintiff's objection to the order of the Railroad Commission of the State of California, offered by defendant, dated November 20, 1911, granting permission to the carriers to continue the present rate bases and adjusting rates pending hearing on applications for relief from the provisions of Section 21 of Article XII of the Constitution of the State of California, made and entered in case No. 214 entitled, “In the matter of the provisions of Section 21 of Article XII of the Constitution of California, relating to long and short hauls and through rates exceeding aggregate of intermediate rates,” said objection being made upon the ground that said order was immaterial, irrelevant and incompetent, and did not show that the Railroad Commission, after investigation, had granted relief from the provisions of Section 21 of Article XII of the Constitution of the State of California as amended October 10, 1911, plaintiff expressly waiv-

ing objection to said offer on the ground that it was not certified. The Court also erred in excluding said document from evidence and in not admitting same in evidence, and in ruling that the same was incompetent, irrelevant and immaterial. Said document so excluded from evidence was and is in words and figures following, to wit: [256—30]

BEFORE THE RAILROAD COMMISSION OF
THE STATE OF CALIFORNIA.

No. 214.

In the Matter of the Provisions of Section 21 of Article XII of the Constitution of California, Relating to Long and Short Hauls and Through Rates Exceeding Aggregate of Intermediate Rates..

PERMISSION TO CARRIERS TO CONTINUE
PRESENT RATE BASES AND ADJUST-
MENT OF RATES PENDING HEAR-
ING ON APPLICATIONS FOR RELIEF
FROM PROVISIONS OF SECTION 21
ARTICLE 12 OF CONSTITUTION OF
CALIFORNIA.

To All Railroads and Other Transportation Companies Within the State of California.

Permission is hereby granted to railroads and other transportation companies until January 2d, 1912, to file for establishment with the Commission in the manner prescribed by law and in accordance with the Commission's regulations, such changes in rates and fares as would occur in the ordinary course of their business, continuing, under

the present rate bases or adjustments, higher rates or fares at intermediate points; provided, that in so doing the discrimination against intermediate points is not made greater than that in existence October 10th, 1911, except when a longer line or route desires to reduce rates or fares to the more distant point for the purpose of meeting by a direct haul reduction of rates or fares made by the shorter line.

The Commission does not hereby indicate that it will finally approve any rates and fares that may be filed under this permission or concede the reasonableness of any higher rates to intermediate points [257—31] all of which rates and fares will be investigated at the hearing to be held January 2d, 1912.

By order of the Commission.

CHARLES R. DETRICK,
Secretary.

Dated San Francisco, California, November 20th, 1911.

[Seal] A true copy.

H. G. MATHEWSON,
Assistant Secretary Railroad Commission State of
California. [258—32]

(4) The Court erred in sustaining the plaintiff's objection to the introduction in evidence of certified copies of Southern Pacific Company's petitions Nos. 3, 9, 10, 30, and 40 addressed to the Railroad Commission of the State of California praying for relief from the provisions of Section 21 of Article XII of the Constitution of the State of

California as amended October 10, 1911, with respect to the rates specified in those petitions which said petitions were filed December 30, 1911, pursuant to the order made by the Railroad Commission on November 20th, and notice dated October 26th, 1911, excluded from evidence by the Court, said objection being made upon the ground that said petitions and each of them were irrelevant, immaterial and incompetent. The Court also erred in excluding said petitions and each of them from evidence and in not admitting same and each of them in evidence and in ruling that said petitions and each of them were incompetent, irrelevant and immaterial. Said petitions so excluded from evidence were and are in words and figures following, to wit: [259—33]

Form B

Petition No. 3 C. R. C. No. . .

SOUTHERN PACIFIC COMPANY

(Pacific System)

FREIGHT TRAFFIC DEPARTMENT

To the RAILROAD COMMISSION OF CALIFORNIA,

San Francisco, California.

APPLICATION FOR RELIEF FROM PROVISIONS OF SECTION 21 OF ARTICLE XII OF THE CONSTITUTION OF CALIFORNIA AS AMENDED OCTOBER 10, 1911, FOR ACCOUNT OF TARIFF LOCAL RATES OF JAN. 1, 1894, C. R. C. NO. 134 WHICH IS ON FILE WITH YOUR HONORABLE COMMISSION:

The SOUTHERN PACIFIC , COMPANY, through H. A. JONES, its Freight Traffic Manager, petitions the Railroad Commission of California for authority to continue for itself and participating carriers, which may be named in above-mentioned tariff, rates for the transportation of property as described in Column No. 1, page 2, from points specified in Column No. 2, and to points specified in Column No. 3, lower rates than concurrently in effect from or to intermediate points as described in Column No. 4; the highest charge at such intermediate points to apply at point shown in Column No. 5, and to be not more than cents per 100 lbs., shown in Column No. 6 in excess of the rates to points shown in Column No. 7.

The following tabulation, page 2, outlines in a general way the adjustment of rates covered by tariff C. R. C. No. 134, and is in the nature of an explanation of the general features where the rates do not conform to Section 21 of Article XII of the Constitution of California as amended October 10, 1911. There are, however, instances other than those specifically mentioned in this petition in which the charges are greater in the aggregate for the transportation of like kinds of property for the shorter than for the longer distance over the same line or road in the same direction, the shorter being included within the longer distance, but it is not practicable to state them all in detail in this petition, and it is the desire of your petitioner to continue such rates in force as in said tariff provided, reference hereby being made to said tariff for further de-

tails and particulars as to said rates.

This application is based upon the desire of petitioner to meet by direct haul, lower rates fixed at the more distant point by competition with water carriers, viz., by the California Transportation Company et al. and "tramp" vessels.

Respectfully submitted,
SOUTHERN PACIFIC COMPANY,
By H. A. JONES,
Its Freight Traffic Manager,
H. G. TOLL.

Subscribed and sworn to before me this 30th day of December, 1911.

[Seal] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires Feb. 25, 1914. [260—34]

| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 | Column 7 |
|--|---------------|-------------|---|--|--------------------------------------|--|
| Description of Traffic. Class Rates (1st Class) | From | To | Description of Intermediate Points. Rodeo Bethany and points between Alston Ellis and points between | High Rate Intermediate Point. | Excess of Rate Per 100 Lbs. | More Distant Point at Which Lower Rate is Proposed. |
| | San Francisco | Stockton | | Herdlyn | | Stockton |
| | | | | Cayley | | Stockton |

This will also cover rates to and from points beyond and to and from intermediate points
which are influenced by rates shown above.

Form B

Petition No. 9

C. R. C. No.

SOUTHERN PACIFIC COMPANY

(Pacific System)

FREIGHT TRAFFIC DEPARTMENT

To the RAILROAD COMMISSION OF CALIFORNIA,

San Francisco, California.

APPLICATION FOR RELIEF FROM PROVISIONS OF SECTION 21 OF ARTICLE XII OF THE CONSTITUTION OF CALIFORNIA AS AMENDED OCTOBER 10, 1911, FOR ACCOUNT OF TARIFF, LOCAL FREIGHT TARIFF # 37 C. R. C. No. 12, WHICH IS ON FILE WITH YOUR HONORABLE COMMISSION:

The SOUTHERN PACIFIC COMPANY, through H. A. JONES, its Freight Traffic Manager, petitions the Railroad Commission of California for authority to continue for itself and participating carriers, which may be named in above-mentioned tariff, rates for the transportation of property as described in Column No. 1, page 2, from points specified in Column No. 2, and to points specified in Column No. 3, lower rates than concurrently in effect from or to intermediate points as described in Column No. 4; the highest charge at such intermediate points to apply at point shown in Column No. 5, and to be not more than cents per 100 lbs., shown in Column No. 6 in excess of the rates to points shown in Column No. 7.

The following tabulation, page 2, outlines in a general way the adjustment of rates covered by tariff C. R. C. No. 12, and is in the nature of an explanation of the general features where the rates do not conform to Section 21 of Article XII of the Constitution of California as amended October 10, 1911. There are, however, instances other than those specifically mentioned in this petition in which the charges are greater in the aggregate for the transportation of like kinds of property for the shorter than for the longer distance over the same line or road in the same direction, the shorter being included within the longer distance, but it is not practicable to state them all in detail in this petition, and it is the desire of your petitioner to continue such rates in force as in said tariff provided, reference hereby being made to said tariff for further details and particulars as to said rates.

This application is based upon the desire of petitioner to meet by direct haul, lower rates fixed at the more distant point by competition with water carriers, viz., by the over a longer line or route competitive conditions created at Tulare by A. T. & S. F. Ry. and "tramp" vessels.

Respectfully submitted,
SOUTHERN PACIFIC COMPANY,
By H. A. JONES,
Its Freight Traffic Manager,
By H. G. TOLL.

Subscribed and sworn to before me this 30th day of
December, 1911.

[Seal]

E. B. RYAN,
Notary Public in and for the City and County of San
Francisco, State of California.

My commission expires Feb. 25, 1914. [261--36]

| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 | Column 7 |
|--|-----------------|--------------|--|---|--------------------------------------|--|
| Description of Traffic. Class Rates (1st Class) | From Visalia | To Tulare | Description of Intermediate Points. Goshen Jct. Tagus | High Rate Intermediate Point. Tagus | Excess of Rate Per 100 Lbs. | More Distant Point at Which Lower Rate is Proposed. Tulare |

Form B

Petition No. 10.

C. R. C. No.....

SOUTHERN PACIFIC COMPANY.

(Pacific System)

FREIGHT TRAFFIC DEPARTMENT.

To the RAILROAD COMMISSION OF CALIFORNIA,

San Francisco, California.

APPLICATION FOR RELIEF FROM PROVISIONS OF SECTION 21 OF ARTICLE XII OF THE CONSTITUTION OF CALIFORNIA AS AMENDED OCTOBER 10, 1911, FOR ACCOUNT OF TARIFF LOCAL FREIGHT TARIFF #37, C. R. C. No. 12, WHICH IS ON FILE WITH YOUR HONORABLE COMMISSION:

The SOUTHERN PACIFIC COMPANY, through H. A. JONES, its Freight Traffic Manager, petitions the Railroad Commission of California for authority to continue for itself and participating carriers, which may be named in above-mentioned tariff, rates for the transportation of property as described in Column No. 1, page 2, from points specified in Column No. 2, and to points specified in Column No. 3, lower rates than concurrently in effect from or to intermediate points as described in Column No. 4; the highest charge at such intermediate points to apply at point shown in Column No. 5, and to be not more than cents per 100 lbs., shown in Column No. 6 in excess of the rates to points shown in Column No. 7.

The following tabulation, page 2, outlines in a gen-

eral way the adjustment of rates covered by tariff C. R. C. No. 12, and is in the nature of an explanation of the general features where the rates do not conform to Section 21 of Article XII of the Constitution of California as amended October 10, 1911. There are, however, instances other than those specifically mentioned in this petition in which the charges are greater in the aggregate for the transportation of like kinds of property for the shorter than for the longer distance over the same line or road in the same direction, the shorter being included within the longer distance, but it is not practicable to state them all in detail in this petition, and, it is the desire of your petitioner to continue such rates in force as in said tariff provided, reference hereby being made to said tariff for further details and particulars as to said rates.

This application is based upon the desire of petitioner to meet by direct haul, lower rates fixed at the more distant point by competition with water carriers, viz., by the California Transportation Company and "tramp" vessels.

Respectfully submitted,

SOUTHERN PACIFIC COMPANY,

By H. A. JONES,

Its Freight Traffic Manager.

By H. G. TOLL,

Subscribed and sworn to before me this 30th day of December, 1911.

[Seal]

E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

My commission expires Feb. 25, 1914. [262—38]

| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 | Column 7 |
|----------------------------|---------------|-------------|--|--|--------------------------------------|--|
| Description of Traffic. | From | To | Description of Intermediate Points. | High Rate Intermediate Point. | Excess of Rate Per 100 Lbs. | More Distant Point at Which Lower Rate is Proposed. |
| Class Rates 1st Class | San Francisco | Tracy | Rodeo Bethany and points between | Herdlyn | 7 | Tracy |
| Do. | | | Alston Ellis and points between | Cayley | 8 | Tracy |

This will also cover rates to and from points beyond and to and from intermediate points which are influenced by rates shown above.

Form B

Petition No. 30.

C. R. C. No.

SOUTHERN PACIFIC COMPANY.

(Pacific System)

FREIGHT TRAFFIC DEPARTMENT.

To the RAILROAD COMMISSION OF CALIFORNIA,

San Francisco, California.

APPLICATION FOR RELIEF FROM PROVISIONS OF SECTION 21 OF ARTICLE XII OF THE CONSTITUTION OF CALIFORNIA AS AMENDED OCTOBER 10, 1911, FOR ACCOUNT OF TARIFF S. P. CO'S NO. 659, C. R. C. NO. 805, WHICH IS ON FILE WITH YOUR HONORABLE COMMISSION:

The SOUTHERN PACIFIC COMPANY, through H. A. JONES, its Freight Traffic Manager, petitions the Railroad Commission of California for authority to continue for itself and participating carriers, which may be named in above-mentioned tariff, rates for the transportation of property as described in Column No. 1, page 2, from points specified in Column No. 2, and to points specified in Column No. 3, lower rates than concurrently in effect from or to intermediate points as described in Column No. 4; the highest charge at such intermediate points to apply at point shown in Column No. 5, and to be not more than cents per 100 lbs., shown in Column No. 6 in excess of the rates to points shown in Column No. 7.

The following tabulation, page 2, outlines in a gen-

eral way the adjustment of rates covered by tariff C. R. C. No. 805, and is in the nature of an explanation of the general features where the rates do not conform to Section 21 of Article XII of the Constitution of California as amended October 10, 1911. There are, however, instances other than those specifically mentioned in this petition in which the charges are greater in the aggregate for the transportation of like kinds of property for the shorter than for the longer distance over the same line or road in the same direction, the shorter being included within the longer distance, but it is not practicable to state them all in detail in this petition, and, it is the desire of your petitioner to continue such rates in force as in said tariff provided, reference hereby being made to said tariff for further details and particulars as to said rates.

This application is based upon the desire of petitioner to meet by direct haul, lower rates fixed at the more distant point by competition with water carriers, viz., by the Pacific Coast Steamship Co., also rail to parts, thence via Pacific Coast Steamship Company and "tramp" vessels.

Respectfully submitted,
SOUTHERN PACIFIC COMPANY,
By H. A. JONES,
Its Freight Traffic Manager.
H. G. TOLL.

Subscribed and sworn to before me this 30th day of December, 1911.

[Seal] E. B. RYAN,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires Feb. 25, 1914. [263—40]

| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 | Column 7 |
|--|---------------|---------------|--|--|--------------------------------------|--|
| Description of Traffic. | From | To | Description of Intermediate Points. | High Rate Intermediate Point. | Excess of Rate Per 100 Lbs. | More Distant Point at Which Lower Rate is Proposed. |
| Flour, Cereal and cereal products Carloads. | San Francisco | Los Angeles | Octol Burr Tropico and points between | Sylmar | 7½ | Los Angeles |
| Do. | Do. | Do. | Cuesta Tropico and points between | Sylmar Canoga Burbank | 7½ 6¾ 4¼ | Los Angeles |
| Do. | Chico | Do. | Lingard Gadwall Tropico and points between | Acton | 15¼ | Do. |
| Do. | Sacramento | Santa Barbara | Edison Saugus and points between | Honby | 5 | Santa Barbara |

This will also cover rates to and from points beyond and to and from intermediate points
which are influenced by rates shown above.

Petition No. 40. Form A. C. R. C. No.

SOUTHERN PACIFIC COMPANY.

(Pacific System)

FREIGHT TRAFFIC DEPARTMENT.

To the RAILROAD COMMISSION OF CALIFORNIA,

San Francisco, California.

APPLICATION FOR RELIEF FROM PROVISIONS OF SECTION 21 OF ARTICLE XII OF THE CONSTITUTION OF CALIFORNIA AS AMENDED OCTOBER 10, 1911, FOR ACCOUNT OF TARIFF S. P. CO. COMM. SPECIALS #16-Y, C. R. C. NO. 84, WHICH IS ON FILE WITH YOUR HONORABLE COMMISSION:

The SOUTHERN PACIFIC COMPANY, through H. A. JONES, its Freight Traffic Manager, petitions the Railroad Commission of California for authority to continue for itself and participating carriers, which may be named in above-mentioned tariff, rates for the transportation of property as described in Column No. 1, page 2, from points specified in Column No. 2, and to points specified in Column No. 3, lower rates than concurrently in effect from or to intermediate points as described in Column No. 4; the highest charge at such intermediate points to apply at point shown in Column No. 5, and to be not more than cents per 100 lbs., shown in Column No. 6 in excess of the rates to points shown in Column No. 7.

The following tabulation, page 2, outlines in a general way the adjustment of rates covered by tariff

C. R. C. No. 84, and is in the nature of an explanation of the general features where the rates do not conform to Section 21 of Article XII of the Constitution of California as amended October 10, 1911. There are, however, instances other than those specifically mentioned in this petition in which the charges are greater in the aggregate for the transportation of like kinds of property for the shorter than for the longer distance over the same line or road in the same direction, the shorter being included within the longer distance, but it is not practicable to state them all in detail in this petition, and, it is the desire of your petitioner to continue such rates in force as in said tariff provided, reference hereby being made to said tariff for further details and particulars as to said rates.

This application is based upon the desire of petitioner to meet by direct haul over a longer line or route competitive conditions created at by Pacific Coast Steamship Company and various other water-faring craft.

Respectfully submitted,
SOUTHERN PACIFIC COMPANY,
By H. A. JONES,
Its Freight Traffic Manager.
H. G. TOLL.

Subscribed and sworn to before me this 30th day of December, 1911.

[Seal]

E. B. RYAN,

Notary Public in and for the City and County of San Francisco, State of California.

My commission expires Feb. 25, 1914. [264—42]

| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 | Column 7 |
|----------------------------|---------------|-------------|--|--|--------------------------------------|--|
| Description of Traffic. | From | To | Description of Intermediate Points. | High Rate Intermediate Point. | Excess of Rate Per 100 Lbs. | More Distant Point at Which Lower Rate is Proposed. |
| Canned Goods | San Francisco | Los Angeles | Gadwall | Lancaster | 44 | Los Angeles |
| Carloads | Do. | Do. | Lingard Tropico and points between | Paso Robles | 16 | Los Angeles |
| Do. | Do. | Do. | Spence Tropico and points between | | | |

This will also cover rates to and from points beyond and to and from intermediate points which are influenced by rates shown above.

(5) The Court erred in sustaining plaintiff's objection to the copy of the minutes of the California Railroad Commission of January 2, 1912, offered in evidence by defendant, the same being a correct copy of said minutes with the exception of the reporter's transcript therein referred to which was covered by the trial stipulation filed in this cause, plaintiff expressly waiving all objections to said offer on the ground that the same was not certified, plaintiff's objection being based upon the ground that said document was incompetent, irrelevant and immaterial. The Court also erred in excluding said document from evidence and in not admitting same in evidence and in ruling that the same was incompetent, immaterial and irrelevant. Said document so excluded from evidence was and is in words and figures following: [265—44]

In the matter of Case No. 214 entitled "In the matter of the provisions of Section 21 of Article 12 of the Constitution of California relating to long and short hauls and through rates exceeding aggregate of intermediate rates," set for hearing at this time and place, the Commission proceeded to a hearing of the same. The following appearances were entered:

G. J. Bradley of the Merchants and Manufacturers' Association of Sacramento.

W. E. Wheeler and Seth Mann of the Traffic Bureau of the Merchants' Exchange.

F. R. Hill of the Fresno Traffic Association.

F. P. Gregson of the Associated Jobbers of Los Angeles.

G. W. Luce and C. W. Durbrow of the Southern Pacific Company.

Edward Chambers and H. P. Anewalt of the Atchison Topeka & Santa Fe Railway.

E. S. Pillsbury of Wells, Fargo & Company Express.

Archibald Gray and C. H. Helting of the Western Pacific Railway.

William Henshaw of the Southern California Cement Company.

Discussion was held until 11:05 A. M.

(See Reporter's Transcript.)

It is hereby certified that the foregoing is a true copy of minutes of the meeting of the Railroad Commission of the State of California held on the 2d day of January, 1912, insofar as said minutes relate to case No. 214. [266—45]

(6) The Court erred in sustaining the plaintiff's objection to the introduction in evidence of an order of the Railroad Commission of the State of California, dated January 16, 1912, made and entered in case No. 214 entitled "In the matter of the provisions of Section 21 of Article XII of the Constitution of the State of California relating to long and short hauls and through rates exceeding aggregate intermediate rates," which said order extended until February 15, 1912, the time for filing applications for relief from provisions of Section 21 of Article XII of the Constitution of the State of California, said objection being made upon the ground that said offer was irrelevant, incompetent and immaterial, plaintiff expressly waiving objection thereto upon

the ground that same was not certified. The Court also erred in excluding said document from evidence and in not admitting same in evidence and in ruling that the same were incompetent, irrelevant and immaterial. Said document so excluded from evidence was and is in words and figures following, to wit: [267—46]

BEFORE THE RAILROAD COMMISSION OF
THE STATE OF CALIFORNIA.

No. 214.

IN THE MATTER OF THE PROVISIONS OF
SECTION 21 OF ARTICLE XII OF THE
CONSTITUTION OF CALIFORNIA RE-
LATING TO LONG AND SHORT HAULS
AND THROUGH RATES EXCEEDING
AGGREGATE OF INTERMEDIATE
RATES.

It is hereby ordered that the time heretofore granted to the railroad and other transportation companies of the State within which to file with this Commission new schedules removing deviations from the provisions of Section 21 of Article XII of the Constitution of this State, or in case it is decided to justify the same, or any of them, applications to be relieved from the provisions of said section, be and the same is hereby extended to February 15, 1912, at which time said schedules or applications must be filed with this Commissioner. As to any rate or fare as to which neither such schedule nor such application has been filed with this Commission by said date, the provisions of said Section 21, of Article

XII, of the Constitution will at once become operative, and the lower rate or fare for a longer distance will become the maximum rate or fare for all intermediate points on the same line or route for movements in the same direction, the shorter haul being included within the longer distance, and the aggregate of the intermediate rates or fares will become the through rate or fare in cases in which the through rate or fare is now in excess of the aggregate of the intermediate rates or fares.

Until February 15, 1912, the railroad and other transportation companies may file for establishment with the Commission in the manner prescribed by law and in accordance with the Commission's regulations such changes in rates and fares as would occur in the [268—47] ordinary course of their business, continuing, under the present rate bases or adjustments, higher rates or fares at intermediate points: Provided that in so doing the discrimination against intermediate points is not made greater than that in existence October 10, 1911, except when a longer line or route desires to reduce rates or fares to the most distant point for the purpose of meeting by a direct haul reduction of rates or fares made by the shorter line. The Commission does not hereby indicate that it will finally approve any rates and fares that may be filed under this permission or concede the reasonableness of any higher rates to intermediate points, all of which rates and fares will be subject to investigation and correction.

And be it further ordered that the Secretary be and he is hereby ordered to serve a copy of this or-

der on each of said railroad and other transportation companies and to notify each of them to comply with all requirements hereof.

Dated: January 16, 1912. [269—48]

(7) The Court erred in sustaining plaintiff's objection to the certified copy of the decision of the Railroad Commission of the State of California, dated March 28, 1912, made and entered in case No. 116 entitled, "Traffic Bureau of the Merchants Exchange, complainants, vs. Southern Pacific Company, a corporation, and Atchison, Topeka and Santa Fe Railway Company, a corporation, defendants, Associated Jobbers of Los Angeles, Stockton Jobbers and Manufacturers' Association, Kern County Merchants Association and Fresno Traffic Association, Interveners," offered in evidence by defendant said objection being made upon the ground that said offer was immaterial, irrelevant, and incompetent and not made by the Commission in pursuance of said Section 21 of Article XII of the Constitution of the State of California and was not made by the Commission upon the application made by the carriers for relief from the provisions of said section and that said order did not become effective until after the movement of the shipments described in the complaint. The Court also erred in excluding said document from evidence and in not admitting same in evidence and in ruling that same was incompetent, immaterial, and irrelevant and was not made by the Commission in pursuance of said Section 21 of Article XII of the Constitution and was not made by the Commission upon the application of the carriers

for relief from the provisions of said Section and in holding that said order was inadmissible because it was not effective until after the movement of the shipments described in the complaint. Said document so excluded from evidence was and is in words and figures following, to wit: [270—49]

Exhibit No. 7.

COPY.

BEFORE THE RAILROAD COMMISSION OF
THE STATE OF CALIFORNIA.

No. 116.

TRAFFIC BUREAU OF THE MERCHANTS
EXCHANGE,

Complainants,

vs.

SOUTHERN PACIFIC COMPANY (a Corpora-
tion), and ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY (a
Corporation),

Defendants,

ASSOCIATED JOBBERS OF LOS ANGELES,
STOCKTON JOBBERS AND MANUFAC-
TURERS ASSOCIATION, KERN COUNTY
MERCHANTS ASSOCIATION, FRESNO
TRAFFIC ASSOCIATION,

Intervenors.

Decision.

On December 24, 1910, the Railroad Commission decided Case No. 110, wherein an adjustment of the class rates between San Francisco, Stockton, and

Los Angeles and San Joaquin Valley points was made, and made the effective date of the order February 15, 1911. Before this date, the Traffic Bureau of the Merchants Exchange of San Francisco applied to the Commission for a rehearing, which application was contested by the Associated Jobbers of Los Angeles. Thereafter and before the effective date of such order, the Commission denied the application for a rehearing. On March 2, 1911, the Traffic Bureau of the Merchants Exchange of San Francisco filed a complaint against the Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway Company in which complaint that portion of the order in Case No. 110, which provided that Stockton should have "the benefit of a differential under San Francisco equal to the existing class rates from San Francisco to Stockton upon all classes to all points involved" was attacked, and the complainant urged that it was [271—50] not concerned with these arbitrary additions to said rates as they existed at the time of filing this complaint and provided that the same are left to adjustment brought about by untrammelled water competition and are not in any other manner whatsoever fixed or determined." On this theory of the proper method to make rates from San Francisco into the San Joaquin Valley, the complaint attacks all class rates from the City of Stockton to all points in the San Joaquin Valley and "charges that said rates applying from Stockton to the points named are, and each of them is, excessive, unreasonable, unjust and unlawful." Regardless of its contention, however,

that the rates from San Francisco shall be left "to adjustment brought about by untrammelled water competition and are not in any other manner whatsoever fixed or determined," the complaint prays that this Commission "determine and prescribe what will be the just and reasonable rates and charges to be hereafter observed and charged for the transportation of merchandise from said Cities of San Francisco and Stockton, respectively, to points in the San Joaquin Valley." Thereafter the Southern Pacific and the Atchison, Topeka & Santa Fe Railway Company filed answers denying the material allegations of the complaint. The Associated Jobbers of Los Angeles were permitted by the Commission to intervene on the question of the reasonableness of the class rates from Los Angeles to all points in the San Joaquin Valley and from all points within the San Joaquin Valley to Los Angeles, and the Stockton Jobbers and Manufacturers Association, the Kern County Merchants Association and the Fresno Traffic Association were also permitted to intervene on the sole question of the reasonableness of the rates attacked in the complaint and by the Los Angeles intervenors. The case was tried by all parties in the theory that only main line points are involved.

We have therefore directly in issue all the rates on the main lines of these two carriers between Stockton and all points in the [272—51] San Joaquin Valley and between all points within the San Joaquin Valley and all other points within the San Joaquin Valley and from Los Angeles to all points in the San Joaquin Valley and from all points

within the San Joaquin Valley to Los Angeles, and after careful consideration of all the evidence presented in the case, the Commission is of the opinion and finds, as a fact, that the rates in question insofar as they exceed the rates set out in the schedules hereto attached and made a part hereof, are excessive, unjust and unreasonable, and the Commission sets out herein schedules of rates to be observed by these carriers, respectively, for the transportation of freight at class rates between the points named therein, and finds the rates set out in such schedules to be just and reasonable rates.

In order that there may be no misapprehension on the part of the carriers involved as to the scope of this decision, we have, as already indicated, prescribed the actual rates to be charged between all points involved, and as to such rates there can be no confusion. As to rates from and to points other than those involved in this decision in making such adjustments as may be made necessary by this decision, the carriers will, of course, bear in mind, the provisions of Article XII, Section 21 of the Constitution of this State preventing the charging of a greater compensation in the aggregate for the transportation of a like kind of property for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer, and also that portion of the same section preventing the charging of any greater compensation as a through rate than the aggregate of the intermediate rates, and likewise Article XII, Section 20 of the Constitution pre-

venting the increase of any rates without the permission of the Railroad Commission.

Two schedules of class rates are attached hereto and made a part hereof. Schedule No. 1 is hereby established as just and reasonable [273—52] rates to be observed by the Southern Pacific Company, and Schedule No. 2 is hereby established as just and reasonable rates to be observed by the Atchison, Topeka & Santa Fe Railway Company, both of such schedules to become effective on the 27th day of April, 1912, and before such time the carriers are instructed to present to this Commission, and to distribute as required by law, printed copies of such tariffs.

Dated March 28, 1912.

San Francisco, California.

JOHN M. ESHLEMAN,

H. D. LOVELAND,

ALEX. GORDON,

Commissioners.

A true copy.

[Seal] (Signed.) H. G. MATHEWSON,

Assistant Secretary Railroad Commission, State of California.

(The schedule of rates herein referred to are on file in the office of the Railroad Commission of the State of California.)

It is hereby certified that the foregoing contains a full, true, and correct copy of the decision and order of the Railroad Commission of the State of California in Case 116, Decision No. 56, decided March 28, 1912, and reported in Volume 1 of the

published Opinions and Orders of said Commission at page 95 and following, with the exception of the schedules of rates referred to in said order.

It is further certified that in said schedule of rates there appeared a 5th class rate of 43 cents per 100 pounds applicable on roofing paper in car-load lots from Los Angeles to Fresno, and that said last mentioned rate was in effect June 11, 1912, and said last mentioned rate appears in Southern Pacific Company's freight tariff No. 711, California Railroad Commission No. 1515, which said last mentioned tariff was filed with this Commission and became effective according to its terms on May 27, 1912, and is now on file with this Commission.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said Commission on this 3 day of April, 1915.

(Signed.) CHARLES R. DETRICK, (Seal)
Secretary, Railroad Commission of the State of
California. [274—53]

(8) The Court erred in sustaining and in not overruling the objection of plaintiff to the following question propounded to the witness Gompf made upon the ground that the same was immaterial, irrelevant and incompetent.

“Mr. BOOTH.—This witness' testimony, if your Honor please, and documentary evidence I intend to offer, are addressed to the question of whether the Railroad Commission established the local rates or intermediate rates shown on “Exhibit A” prior to October 10, 1911, the rates so established being in conflict with the long and short haul clause in the

Constitution as it stood up to October 10, 1911. I want to renew my question to Mr. Gomph by asking him if this letter which I show him, a certified copy of a letter which I show him is a correct copy of a letter sent to the California Railroad Commission by the Southern Pacific Company through the witness' agency, transmitting the tariffs therein specified, and if these tariffs were filed with the Commission."

(9) The Court erred in sustaining plaintiff's objection to the letter offered by the defendant addressed to the Board of Railroad Commissioners at San Francisco, California, dated May 7, 1909, upon the ground that the same was irrelevant, incompetent, and immaterial, and the Court also erred in excluding said letter from evidence and in not admitting same in evidence and in ruling that the same was incompetent, irrelevant, and immaterial. Said letter so excluded from evidence was and is in words and figures following, to wit: [275—54]

(COPY)

ACT

Z-11713

May 7th, 1909.

Board of Railroad Commissioners,
San Francisco, Cal.

Gentlemen:—We beg to acknowledge receipt of your favor of April 26th, in regard to filing Tariffs with your Board:

We have placed a C. C. No. on the upper margin of all Tariffs and Circulars which name rates or rules and regulations affecting rates on traffic having both origin and destination within the State of Cali-

fornia, and are handing you herewith all such issues published by the Southern Pacific Co. which are in effect on this date. The Tariffs are numbered consecutively with the lowest number on the bottom, and all supplements have been placed within each Tariff or attached to same in a secure manner which will enable you to readily place our entire issue in your files. It is understood that where other lines have issued Joint Tariffs in connection with the Southern Pacific Co. under proper concurrence, the issuing line only files such Tariffs with your Board, and that it is not necessary for other lines parties to such joint Tariffs to also file same under their individual C. C. No. which would only result in endless duplication of Tariffs in your files. Have asked the Chairman of the Western Classification Committee, and Mr. Mote of the Pacific Car Service Bureau, to file the Western Classification and the Car Demurrage Tariff with you direct for our account.

Following is a detailed statement of tariffs enclosed herewith, showing C. R. C. No., Tariff No., and Supplements by both C. R. C. No. and Tariff No.

Will you please favor us with a receipt for all of these issued. This communication is sent you in duplicate, so that it may be used to check our figures and serve to return one copy to us as a receipt for the publications. [276—55]

| C. R. C. No. | L. F. T. | Tariff No. | C. R. C. No. | Tariff No. |
|-----------------|----------|---------------|---|---|
| 1 | L. F. T. | 1 | 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37. | 67, 71, 74, 75, 76, 79, 80, 83, 84, 87, 88, 89, 90, 91, 93, 94, 95, 97, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117. |
| 2 | L. F. T. | 3 | 1, 2, 3. | 1, 2, 3, |
| 3 | L. F. T. | 4-A | | |
| 4 | L. F. T. | 5 | 1, | 2 |
| 5 | L. F. T. | 9-A | 1, 2, | 3, 4 |
| 6 | L. F. T. | 10-A | 1, 2, 3. | 4, 5, 6, |
| 7 | L. F. T. | 14-A | 1, 2, | 3, 4 |
| 8 | L. F. T. | 28-B | | |
| 9 | L. F. T. | 34-C | | |
| 10 | L. F. T. | 35 | | |
| 11 | L. F. T. | 36 | | |
| 12 | L. F. T. | 37 | 1, 2, | 3, 7, |
| 13 | L. F. T. | 39 | 1, | 1, |
| 14 | L. F. T. | 61-C | | |
| 15 | L. F. T. | 63-A | 1, | 1, |
| 16 | J. F. T. | 75 | 1, 2, | 2, 3, |
| 17 | L. F. T. | 79-B | | |
| 18 | J. F. T. | 83-A | | |
| 19 | J. F. T. | 84 | 1, 2, | 3, 4, |
| 20 | J. F. T. | 92 | 1, 2, | 4, 5 |
| 21 | L. F. T. | 102 | 1, 2, | 1, 3 |
| 22 | L. F. T. | 121-A | 1, 2, | 4, 5 |
| 23 | J. F. T. | 134-B | | |
| 24 | J. F. T. | 153-B | 1, | 1, |
| 25 | L. F. T. | 181-A | | |
| 26 | J. F. T. | 183-A | | |
| 27 | L. F. T. | 193 | 1, 2, | 2, 3 |
| 28 | L. F. T. | 195 | | |
| 29 | L. F. T. | 201-A | | |
| 30 | T. T. | 230-D | 1, | 1, |
| 31 | L. F. T. | 251-A | 1, | 3, |
| 32 | J. F. T. | 276-B | 1, 2, 3. | 1, 2, 3, |
| 33 | C. T. | 291-C | | |
| 34 | L. F. T. | 298 | | |
| 35 | L. F. T. | 301 | | |
| 36 | J. F. T. | 305 | 1, | 3, |
| 37 | L. F. T. | 316-B | | |
| 38 | J. F. T. | 320-A | | |
| 39 | J. F. T. | 322-A | | |
| 40 | J. F. T. | 327-A | | |
| 41 | L. F. T. | 330-B | 1, 2, 3. | 1, 2, 3, |
| 42 | L. F. T. | 332 | 1, 2, | 1, 2 |
| 43 | L. F. T. | 335-B | 1, 2, 3. | 1, 2, 3, |
| 44 | J. F. T. | 336 | | |
| 45 | L. F. T. | 339-B | | |
| 46 | J. F. T. | 340-A | | |

| C. R. C. No. | Tariff No. | Supplements. C. R. C. No. | Tariff No. |
|-----------------|---------------------|------------------------------|--|
| 47 | L. F. T. | 348-B | |
| 48 | J. F. T. | 349-B | |
| 49 | L. F. T. | 350-C | |
| 50 | L. F. T. | 353-A | |
| 51 | J. F. T. | 358 | |
| 52 | L. F. T. | 360-D | |
| 53 | L. F. T. | 362 | |
| 54 | J. F. T. | 374 | 1, |
| 55 | L. F. T. | 380-A | 1, |
| 56 | L. F. T. | 381 | |
| 57 | L. F. T. | 382-A | |
| 58 | L. F. T. | 383-B | |
| 59 | J. F. T. | 384 | |
| 60 | J. F. T. | 404-A | 1, 2, 3, |
| 61 | L. F. T. | 421 | 1, 2, |
| 62 | L. F. T. | 440 | 1, |
| 63 | L. F. T. | 441 | 1, |
| 64 | L. F. T. | 442 | 1, |
| 65 | J. F. T. | 446-A | 1, |
| 66 | J. F. T. | 469 | 1, |
| 67 | J. F. T. | 473 | |
| 68 | J. F. T. | 474 | 1, |
| 69 | J. F. T. | 475 | |
| 70 | L. F. T. | 476 | |
| 71 | L. F. T. | 477 | |
| 72 | J. F. T. | 478 | |
| 73 | J. F. T. | 490 | |
| 74 | J. F. T. | 491-A | |
| 75 | J. F. T. | 505 | |
| 76 | J. F. T. | 511 | |
| 77 | L. F. T. | 523 | 1, |
| 78 | Com. Trf. | 6 | 1, |
| 79 | " " | 7 | 1, |
| 80 | " " | 9 | 1, 2, 3, |
| 81 | " " | 73-G | 1, 2, 3, |
| 82 | " " | 78-G | 1, 2, 3, |
| 83 | " " | 82-G | 1, 2, 3, |
| 84 | Com. Specs. | 16-Y | 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, |
| 85 | Jt. Com. Trf. | 4-NCNG | 1, 2, 3, 4, 5, 6, 7, |
| 86 | " Mdse. " | 5-NCNG | 1, 2, 3, |
| 87 | " " " | 11-S. Ry. | 1, 2, 3, 4, |
| 88 | " Com. " | 13-S. Ry. | 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, |
| 89 | Mdse. Trf. | 74-G | 1, 2, |
| 90 | Merchandise Tariff | 75-G | 1, 2, |
| 91 | Merchandise Tariff | 76-G | 1, 2, 3, |
| 92 | Merchandise Tariff | 85-G | 1, 2, 3, 4, |
| 93 | Merchandise Tariff | 86-G | |
| 94 | Merchandise Tariff | 87-G | |
| 95 | Merchandise Tariff | 9-VI | |
| 96 | Special Com. Tariff | 19-Y | 1, 2, 3, 4, |
| 97 | Flour Specials | 3 | 1, 2, 3, 4, 5, |
| 98 | Flour Tariff | 3 | 1, 2, 3, 4, 5, 6, 7, 8, |
| 99 | Fruit Specials | 4 | 1, 2, 3, 4, 5, 6, 7, |

| C. R. Co. No. | Tariff No. | Supplements. C. R. C. No. | Tariff No. |
|------------------|------------------------|------------------------------|--|
| 100 | Fruit Tariff | 4 | 1, 2, 3. |
| 101 | Grain Specials | 4 | 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, |
| 102 | Grain Tariff | 4 | 1, 2, 3, 4, 5, 6, 7, |
| 103 | Hay & Straw Spl. | 3 | 1, 2, 3, 4, 5, 6, 7, 8, 9, |
| 104 | Hay & Straw Tariff | 6 | 1, 2, 3, 4, |
| 105 | Ice Specials | 3 | 1, 2, 3, 4, |
| 106 | Ice Tariff | 8 | 1, 2, |
| 107 | Live Stock Specials | 3 | 1, 2, 3, 4, 5, 6, 7, |
| 108 | Live Stock Tariff | 6 | 1, 2, 3, 4, 5, 6, 7, |
| 109 | Lumber Specials | 3 | 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, |
| 110 | Lumber Tariff | 3 | 1, 2, 3, 4, 5, 6, |
| 111 | Ore Specials | 3 | 1, 2, 3, 4, 5, 6, 7, |
| 112 | Ore Tariff | 3 | 1, 2, 3, 4, |
| 113 | Placerville Com. Trf. | 1 | 1, 2, 3, 4, 5, 6, |
| 114 | Switching Tariff | 1 | |
| 115 | Switching Tariff | 2 | |
| 116 | Vegetable Specials | 3 | 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, |
| 117 | Vegetable Tariff | 4 | 1, |
| 118 | Spl. Wine Tariff | 1 | 1, 2, 3. |
| 119 | Spl. Wine Tariff | 2 | 1, 2, 3, 4, 5, 6, 7, |
| 120 | Spl. Wine Tariff | 3 | 1, 2, 3. |
| 121 | Spl. Wine Tariff | 4 | 1, 2, 3, 4, |
| 122 | Spl. Wine Tariff | 5 | 1, 2, |
| 123 | Spl. Wine Tariff | 6 | 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, |
| 124 | Spl. Wine Tariff | 8 | 1, |
| 125 | Spl. Wine Tariff | 9-A | |
| 126 | Spl. Wine Tariff | 10 | 1 |
| 127 | Wood Specials | 3 | 1, 2, 3, 4, 5, 6, 7, |
| 128 | Wood Tariff | 2 | 1, 2, 3, 4, |
| 129 | Exception Sheet | 2 | 1, |
| 130 | Jt. Special Rate | 153 | 1, 2, |
| 131 | Jt. Special Rate | 157 | 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, |
| 132 | Jt. Special Rate | 162 | 1, 2, |
| 133 | Jt. Special Rate | 189 | 1, |
| 134 | Local Rates of 1894 | | 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15; |
| 135 | Local Rates | 135 | 1, 2, 3, 4, 5, 6, 7, 8, |
| 136 | Local | 138 | |
| 137 | Spcl. Frt. Tariff | 24 | |
| 138 | Spcl. Frt. Tariff | 214-A | |
| 139 | Special Freight Tariff | 219 | |
| 140 | Special Freight Tariff | 236 | |
| 141 | Special Freight Tariff | 286 | |
| 142 | Special Freight Tariff | 296 | |
| 143 | Special Freight Tariff | 301 | |
| 144 | Special Freight Tariff | 310 | |
| 145 | Special Freight Tariff | 311 | |

| C. R. C. No. | | Tariff No. | Supplements. C. R. C. No. | Tariff No. |
|-----------------|------------------------|---------------|------------------------------|------------|
| 146 | Special Freight Tariff | 312 | | |
| 147 | Special Freight Tariff | 314 | | |
| 148 | Special Freight Tariff | 315 | | |
| 149 | Special Freight Tariff | 338 | | |
| 150 | Special Freight Tariff | 341 | | |
| 151 | Special Freight Tariff | 342 | | |
| 152 | Special Freight Tariff | 343-A | | |
| 153 | Special Freight Tariff | 348 | | |
| 154 | Special Freight Tariff | 349 | | |
| 155 | Special Freight Tariff | 356 | | |
| 156 | Special Freight Tariff | 367 | | |
| 157 | Special Freight Tariff | 371 | | |
| 158 | Special Freight Tariff | 386-A | | |
| 159 | Special Freight Tariff | 387-A | | |
| 160 | Special Freight Tariff | 388-A | | |
| 161 | Special Freight Tariff | 400 | | |
| 162 | Special Freight Tariff | 405 | | |
| 163 | Special Freight Tariff | 413 | | |
| 164 | Special Freight Tariff | 421 | | |
| 165 | Special Freight Tariff | 423 | | |
| 166 | Special Freight Tariff | 424 | | |
| 167 | Special Freight Tariff | 436 | | |
| 168 | Special Freight Tariff | 438-A | | |
| 169 | Special Freight Tariff | 444 | | |
| 170 | Special Freight Tariff | 451 | | |
| 171 | Special Freight Tariff | 454-A | | |
| 172 | Special Freight Tariff | 457 | | |
| 173 | Special Freight Tariff | 528 | | |
| 174 | Special Freight Tariff | 541 | | |
| 175 | Special Freight Tariff | 542 | | |
| 176 | Special Freight Tariff | 543 | | |
| 177 | Special Freight Tariff | 544 | | |
| 178 | Special Freight Tariff | 545 | | |
| 179 | Special Freight Tariff | 546 | | |
| 180 | Special Freight Tariff | 547 | | |
| 181 | Special Freight Tariff | 549-A | | |
| 182 | Special Freight Tariff | 550 | | |
| 183 | Special Freight Tariff | 551 | | |
| 184 | Special Freight Tariff | 552 | | |
| 185 | Special Freight Tariff | 553 | | |
| 186 | Special Freight Tariff | 554 | | |
| 187 | Special Freight Tariff | 555 | | |
| 188 | Special Freight Tariff | 559 | | |
| 189 | Special Freight Tariff | 577 | | |
| 190 | Special Freight Tariff | 591 | | |
| 191 | Special Freight Tariff | 594 | | |
| 192 | Special Freight Tariff | 597 | | |
| 193 | Special Freight Tariff | 598 | | |
| 194 | Special Freight Tariff | 599 | | |
| 195 | Special Freight Tariff | 600 | | |
| 196 | Special Freight Tariff | 602 | | |
| 197 | Special Freight Tariff | 622 | | |
| 198 | Special Freight Tariff | 626 | | |
| 199 | Special Freight Tariff | 627 | | |
| 200 | Special Freight Tariff | 630 | | |
| 201 | Special Freight Tariff | 634 | | |
| 202 | Special Freight Tariff | 635 | | |
| 203 | Special Freight Tariff | 644 | | |
| 204 | Special Freight Tariff | 669 | | |

| C. R. C. No. | | Tariff No. | C. R. C. No. | Tariff No. |
|-----------------|------------------------|---------------|--------------|------------|
| 205 | Special Freight Tariff | 670 | | |
| 206 | Special Freight Tariff | 672 | | |
| 207 | Special Freight Tariff | 674 | | |
| 208 | Special Freight Tariff | 675 | | |
| 209 | Special Freight Tariff | 687 | | |
| 210 | Special Freight Tariff | 688 | | |
| 211 | Special Freight Tariff | 689 | | |
| 212 | Special Freight Tariff | 697 | | |
| 213 | Special Freight Tariff | 703 | | |
| 214 | Special Freight Tariff | 704 | | |
| 215 | Special Freight Tariff | 705 | | |
| 216 | Special Freight Tariff | 706 | | |
| 217 | Special Freight Tariff | 712 | | |
| 218 | Special Freight Tariff | 716 | | |
| 219 | Special Freight Tariff | 718 | | |
| 220 | Special Freight Tariff | 720 | | |
| 221 | Special Freight Tariff | 721 | | |
| 222 | Special Freight Tariff | 722 | | |
| 223 | Special Freight Tariff | 723 | | |
| 224 | Special Freight Tariff | 724 | | |
| 225 | Special Freight Tariff | 725 | | |
| 226 | Special Freight Tariff | 726 | | |
| 227 | Special Freight Tariff | 727-B | | |
| 228 | Special Freight Tariff | 731 | | |
| 229 | Special Freight Tariff | 733 | | |
| 230 | Special Freight Tariff | 734 | | |
| 231 | Special Freight Tariff | 736 | | |
| | Joint | | | |
| 232 | Special Freight Tariff | 737 | | |
| 233 | Special Freight Tariff | 739 | | |
| 234 | Special Freight Tariff | 740 | | |
| 235 | Special Freight Tariff | 741 | | |
| 236 | Special Freight Tariff | 742 | | |
| 237 | Special Freight Tariff | 744 | | |
| 238 | Special Freight Tariff | 748 | | |
| 239 | Spl. Joint Frt. Tariff | 749 | | |
| 240 | Special Freight Tariff | 750 | | |
| 241 | Special Freight Tariff | 751 | | |
| 242 | Special Freight Tariff | 752 | | |
| 243 | Special Freight Tariff | 753-A | | |
| 244 | Special Freight Tariff | 755 | | |
| 245 | Special Freight Tariff | 756 | | |
| 246 | Special Freight Tariff | 757 | | |
| 247 | Special Freight Tariff | 758 | | |
| 248 | Special Freight Tariff | 760 | | |
| 249 | Special Freight Tariff | 761 | | |
| 250 | Special Freight Tariff | 762 | | |
| 251 | Special Freight Tariff | 763 | | |
| 252 | Special Freight Tariff | 765-A | | |
| 253 | Special Freight Tariff | 767 | | |
| 254 | Special Freight Tariff | 768 | | |
| 255 | Special Freight Tariff | 770-A | | |
| 256 | Special Freight Tariff | 772 | | |
| 257 | Special Freight Tariff | 773 | | |
| 258 | Special Freight Tariff | 774 | | |
| 259 | Special Freight Tariff | 776 | | |
| 260 | Special Freight Tariff | 777 | | |
| 261 | Special Freight Tariff | 779 | | |
| 262 | Special Freight Tariff | 781 | | |
| 263 | Special Freight Tariff | 782 | | |

| | | Supplements. | |
|-----------------|---------------------------------|--------------|------------|
| C. R. C. No. | Tariff No. | C. R. C. No. | Tariff No. |
| 264 | Special Freight Tariff | | 783 |
| 265 | Special Freight Tariff | | 785 |
| 266 | Spl. Jt. Frt. Tariff | | 786 |
| 267 | Special Freight Tariff | | 788 |
| 268 | Special Freight Tariff | | 789 |
| 269 | Special Freight Tariff | | 793 |
| 270 | Special Freight Tariff | | 794 |
| 271 | Special Freight Tariff | | 795 |
| 272 | Special Freight Tariff | | 796 |
| 273 | Special Freight Tariff | | 797 |
| 274 | Special Jt. Frt. Tariff | | 801 |
| 275 | Special Freight Tariff | | 803 |
| 276 | Special Freight Tariff | | 804 |
| 277 | Special Freight Tariff | | 805 |
| 278 | Special Freight Tariff | | 806 |
| 279 | Special Freight Tariff | | 809 |
| 280 | Special Freight Tariff | | 810 |
| 281 | Special Freight Tariff | | 812 |
| 282 | Special Freight Tariff | | 813 |
| 283 | Special Freight Tariff | | 814-A |
| 284 | Special Freight Tariff | | 816 |
| 285 | Special Freight Tariff | | 817 |
| 286 | Special Freight Tariff | | 818 |
| 287 | Special Freight Tariff | | 819-A |
| 288 | Special Freight Tariff | | 820 |
| 289 | Special Freight Tariff | | 822 |
| 290 | Special Freight Tariff | | 823 |
| 291 | Special Freight Tariff | | 824 |
| 292 | Special Freight Tariff | | 825-A |
| 293 | Special Freight Tariff | | 826 |
| 294 | Special Freight Tariff | | 827 |
| 295 | Special Freight Tariff | | 828 |
| 296 | Special Freight Tariff | | 829 |
| 297 | Special Freight Tariff | | 830 |
| 298 | Special Freight Tariff | | 831 |
| 299 | Special Freight Tariff | | 832 |
| 300 | Special Freight Tariff | | 833 |
| 301 | Special Joint Freight Tariff | | 834-A |
| 302 | Special Freight Tariff | | 835 |
| 303 | Special Freight Tariff | | 837 |
| 304 | Special Freight Tariff | | 840 |
| 305 | Special Freight Tariff | | 841 |
| 306 | Special Freight Tariff | | 842 |
| 307 | Special Freight Tariff | | 843 |
| 308 | Special Freight Tariff | | 844 |
| 309 | Special Freight Tariff | | 845 |
| 310 | Special Freight Tariff | | 846 |
| 311 | Special Freight Tariff | | 847 |
| 312 | Special Freight Tariff | | 848 |
| 313 | Special Freight Tariff | | 849 |
| 314 | Special Freight Tariff | | 850 |
| 315 | Special Freight Tariff | | 851 |
| 316 | Special Freight Tariff | | 852 |
| 317 | Special Freight Tariff | | 853 |
| 318 | Special Freight Tariff | | 854 |
| 319 | Special Freight Tariff | | 858 |
| 320 | Special Freight Tariff | | 859 |
| 321 | Special Freight Tariff | | 860 |
| 322 | Special Freight Tariff | | 862 |
| 323 | Special Freight Tariff | | 863 |
| 324 | Special Freight Tariff | | 864 |

| C. R. C. No. | Tariff No. | Supplements. C. R. C. No. | Tariff No. |
|-----------------|-------------------------|------------------------------|------------|
| 325 | Special Freight Tariff | | 865-A |
| 326 | Special Freight Tariff | | 866 |
| 327 | Special Freight Tariff | | 867 |
| 328 | Special Freight Tariff | | 868 |
| 329 | Special Freight Tariff | | 869 |
| 330 | Special Freight Tariff | | 870 |
| 331 | Special Freight Tariff | | 871 |
| 332 | Special Freight Tariff | | 872 |
| 333 | Special Freight Tariff | | 873 |
| 334 | Special Freight Tariff | | 876 |
| 335 | Special Freight Tariff | | 878 |
| 336 | Special Freight Tariff | | 879 |
| 337 | Special Freight Tariff | | 880 |
| 338 | Special Freight Tariff | | 881 |
| 339 | Special Freight Tariff | | 883 |
| 340 | Special Freight Tariff | | 884 |
| 341 | Special Freight Tariff | | 885 |
| 342 | Special Freight Tariff | | 886 |
| 343 | Special Freight Tariff | | 887 |
| 344 | Special Freight Tariff | | 888 |
| 345 | Special Freight Tariff | | 889 |
| 346 | Special Freight Tariff | | 890 |
| 347 | Special Jt. Frt. Tariff | | 892 |
| 348 | Special Freight Tariff | | 895 |
| 349 | Special Freight Tariff | | 898 |
| 350 | Special Freight Tariff | | 899 |
| 351 | Special Freight Tariff | | 900 |
| 352 | Special Freight Tariff | | 3-TAG |
| 353 | Special Freight Tariff | 1, | 15-TAG |
| 354 | Special Freight Tariff | | 20-TAG |
| 355 | Special Freight Tariff | | 22-TAG |
| 356 | Special Freight Tariff | | 23-TAG |
| 357 | Special Freight Tariff | | 27-TAG |
| 358 | Special Freight Tariff | | 29-TAG |
| 359 | Special Freight Tariff | | 31-TAG |
| 360 | Special Freight Tariff | | 33-TAG |
| 361 | Special Freight Tariff | | 36-TAG |
| 362 | Special Freight Tariff | | 39-TAG |
| 363 | Special Freight Tariff | | 42-TAG |
| 364 | Special Freight Tariff | | 44-TAG |
| 365 | Special Freight Tariff | | 45-TAG |
| 366 | Special Freight Tariff | | 47-TAG |
| 367 | Special Freight Tariff | | 49-TAG |
| 368 | Special Freight Tariff | | 50-TAG |
| 369 | Special Freight Tariff | | 51-TAG |
| 370 | Special Freight Tariff | | 52-TAG |
| 371 | Special Freight Tariff | | 53-TAG |
| 372 | Special Freight Tariff | | 54-TAG |
| 373 | Special Freight Tariff | | 57-TAG |
| 374 | Special Freight Tariff | | 58-TAG |
| 375 | Special Freight Tariff | | 59-TAG |
| 376 | Special Freight Tariff | | 59½-TAG |
| 377 | Special Freight Tariff | | 60-TAG |
| 378 | Special Freight Tariff | | 61-TAG |
| 379 | Special Freight Tariff | | 62-TAG |
| 380 | Special Freight Tariff | | 63-TAG |
| 381 | Special Freight Tariff | | 64-TAG |
| 382 | Special Freight Tariff | | 65-TAG |
| 383 | Local Rate | | 116 |
| 384 | Circular GFD | 1 | 98 |
| 385 | " " | | 120-J |

| C. R. C. No. | | Tariff No. | Supplements. C. R. C. No. | Tariff No. |
|--------------|-------------------------|------------|---|--|
| 386 | Circular GFD | 121-B | 1, 2, 3. | 2, 3, 4, |
| 387 | “ “ to 184 inclusive | 124 | 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, | 1-129, 1-132, 1-135, 1-139 1-141, 1-147, 1-148, 1-152, 1-153, 1-158, 1-170, 1-173 |
| 388 | Circular GFD | 186-K | | |
| 389 | “ “ | 188-A | 1, 2, | 3, 5 |
| 390 | “ “ | 195 | 1, 2, 3, 4, 5, | 76, 80, 89, 104, 105 |
| 391 | “ “ | 197-B | 1, | 1, |
| 392 | “ “ | 204-B | 1, | |
| 393 | “ “ | 207-B | | |
| 394 | “ “ | 210 | 1, | 1, |
| 395 | “ “ | 212-B | | |
| 396 | “ “ | 216 | | |
| 397 | Circular Letter | 319 | | |
| 398 | “ “ | 335 | | |

Yours truly,

H. A. JONES. (Signed.)
F. W. G.

GHR.

RECEIVED

May 8, 1909,

BOARD OF RAILROAD COMMISSIONERS.

W. D. WAGNER. (Signed.)

[284-63]

(10) The Court erred in sustaining and in not overruling the plaintiff's objection to the offer made by the defendant to show by the witness Gomph that all the tariffs of Southern Pacific Company relative to the movement of freight in California, were actually filed with and remained on file with the Railroad Commission of the State of California until the Commission entered an order on June 11, 1909, approving the tariffs on file, said objection being made upon the ground that said offer was immaterial, irrelevant, and incompetent. The Court also erred in ruling and holding that said offer was immaterial, irrelevant and incompetent, and in refusing to permit defendant to make said showing.

(11) The Court erred in sustaining plaintiff's objection to the certified copy of the order made and entered by the Railroad Commission of the State of California dated June 11, 1909, approving the rates, fares and charges of carriers named in said order, said objection being made upon the ground that said order was immaterial, irrelevant and incompetent. The Court also erred in excluding said order from evidence and in not admitting the same in evidence and in ruling that the same was incompetent, irrelevant, and immaterial. The order so excluded from evidence was and is in words and figures following, to wit: [285—64]

SPECIAL MEETING

Friday, June 11th, 1909.

OFFICE OF THE BOARD OF RAILROAD
COMMISSIONERS.Room 10—Ferry Building San Francisco, Cal.
June 11th, 1909.

Pursuant to a resolution adopted by this Commission, June 1st, 1909, the Board met in special session at 10 o'clock A. M. on the above.

PRESENT:

COMMISSIONERS—Irwin, Loveland and Summerland and Secretary Wagner.

On motion of Commissioner Loveland, duly seconded by Commissioner Summerland, the following resolution was unanimously adopted:

WHEREAS, pursuant to and in conformity with a resolution of this Board adopted at the meeting of March 30, 1909, certain carriers to wit:

Northern Electric Railway Company
 Ocean Shore Railway Company
 Los Angeles & Redondo Railway Company
 Nevada & California Railway Company
 Sunset Western Railway Company
 Sunset Railroad Company
 Bay Point & Clayton Railroad Company
 Tonopah & Tidewater Railroad Company
 California Transportation Company
 The Pullman Company
 California Railway
 Los Angeles Pacific Company
 Nevada-California-Oregon & Sierra Valleys
 Railway Co.

Pacific Car Service Bureau
Sierra Railway of California
South San Francisco Belt Railway Company
Colusa & Lake Railroad Company
Arcata & Mad River Railroad Company
Richmond Belt Railway Company
Sugar Pine Railway Company
Los Angeles & San Diego Beach Railway Com-
pany
Nevada County Narrow Gauge Railroad Com-
pany
Lake Tahoe Railway & Transportation Com-
pany
San Diego Southern Railway Company
Stone Canon Pacific Railroad Company
Butte County Railroad Company
San Diego, Cuyama ca & Eastern Railway
Company
Oregon & Eureka Railroad Company
Amador Central Railroad Company
San Francisco, Oakland & San Jose Consoli-
dated Railroad Company [286—65]
Iron Mountain Railway Company
McCloud River Railroad Company
Petaluma & Santa Rosa Transportation Com-
pany
San Pedro, Los Angeles & Salt Lake Railroad
Company
Atchison, Topeka & Santa Fe Railway Company
Diamond & Caldor Railway Company
Southern Pacific Company
Western Pacific Railway Company

Wells Fargo & Company Express

Trans-Continental Scrip Bureau

have each filed with this Commission a printed copy open to public inspection, of schedules, showing the rates, fares and charges of said carriers respectively for transportation of freight and passengers within this State, between different points on their own routes and between points on their own routes and the routes of any other transportation company, when a through or joint rate is in force, and also a like printed copy of schedules for charges for services in connection with the receipt, delivery, transfer in transit, ventilation, refrigeration, icing, storing and handling of property by said carriers respectively.

IT IS THEREFORE RESOLVED, that the aforesaid schedules be and they are hereby received and filed by this Commission as the rates, fares and charges, and joint rates, fares and charges, to the extent that any thereof are joint, which have been made and filed by said carriers respectively, pursuant to the provisions of Section 18 of the Act of the Legislature of this State approved March 20, 1909; and that the said rates, fares and charges shall be published by said carriers respectively as required by the said act, and shall be the lawful rates, fares and charges of said carriers respectively, subject to be changed as in said section provided, or by this

Commission pursuant to the provisions of Section 19 of the aforesaid act.

A true copy.

[Seal] H. G. MATHEWSON (Signed.)

Assistant Secretary Railroad Commission State of California. [287—66]

(12) The Court erred in sustaining and in not overruling plaintiff's objection to the offer made by the defendant to show by the witness J. K. Butler, Assistant General Freight Agent of defendant, Southern Pacific Company, that in his opinion as a freight traffic man the rates charged to plaintiff's assignors in this case were reasonable in and of themselves for the service performed, and that the through rate contended for in this action was a rate less than a reasonable rate in and of itself, for the service to be performed under the through rate and was compelled by actual water competition between the port of San Francisco and the ports tributary to Los Angeles. The Court also erred in refusing to permit said witness to testify to said facts and in ruling that the same were incompetent, irrelevant and immaterial.

XVI.

The Court erred in holding and deciding that:

“It is not true as alleged in Paragraph IV of defendant's answer that in each or any instance stated in the complaint where for the transportation of property defendant charged more for the shorter distance than for the longer distance, in the same direction, of the same amount and class of property,

defendant had been so authorized to do by said Railroad Commission.”

XVII.

The Court erred in holding and deciding that:

“It is not true, as alleged in Paragraph V of defendant’s answer, that in the case of all or any of the shipments described in the complaint as having moved or having been delivered after October 10, 1911, the Railroad Commission of the State of California had prescribed, by order or otherwise, that the defendant might be relieved from the prohibition of the Constitution of the State [288—67] of California against charging less for the longer than for the shorter haul. Nor is it true, that, as alleged in defendant’s seventh further and separate defense contained in its answer, that as to each and all or any of the shipments referred to in plaintiff’s separately stated causes of action, which moved or were delivered after October 10, 1911, the Railroad Commission of the State of California, pursuant to Section 21, Article XII, of the Constitution of the State of California, as amended October 10, 1911, or otherwise, authorized defendant, after investigation, or at all, to charge more for the shorter distance to the point between San Francisco and Los Angeles to which such shipment was transported, than for the longer distance in the same direction.”

XVIII.

The Court erred in holding and deciding that:

“It is not true, as alleged in paragraph III of defendant’s answer, that the property transported by defendant, as alleged in the several separately

stated causes of action, was not property of the same class as the property on which lower through rates from Los Angeles to San Francisco were then being charged by defendant, but to the contrary the Court finds that such property was, in each instance, property of the same class as the property on which lower through rates were so charged.”

XIX.

The Court rendered judgment against the defendant whereas judgment should have been rendered in favor of defendant and against plaintiff.

Wherefore said defendant, Southern Pacific Company, plaintiff [289—68] in error, prays that the judgment of said District Court may be reversed and that said defendant may have judgment against plaintiff for its costs and disbursements here expended.

HENLEY C. BOOTH,

GEO. D. SQUIRES,

FRANK B. AUSTIN,

Attorneys for Defendant, Southern Pacific Company and Plaintiff in Error.

[Endorsed]: Filed Jul. 29, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk, [290—69]

*In the District Court of the United States in and for
the Northern District of California, Second Di-
vision.*

No. 15,638.

CALIFORNIA ADJUSTMENT COMPANY, a
Corporation,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Defendant.

**Order Allowing Writ of Error and Fixing Amount
of Bond.**

In this 29th day of July, 1915, came the above-named Southern Pacific Company, a corporation, defendant herein, by Henley C. Booth, George D. Squires and Frank B. Austin, its attorneys, and filed herein and presented to this Court, its petition praying for the allowance of a writ of error and an assignment of errors intended to be urged by it, praying also that a transcript of the record, proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had as may be proper in the premises:

ON CONSIDERATION WHEREOF, this Court does allow the writ of error, upon the said defendant giving a bond, according to [291] law, in the sum of five thousand dollars, lawful money of the

United States, which said bond shall operate as a supersedeas bond.

Dated at San Francisco, this 29th day of July, 1915.

WM. W. MORROW,
United States Circuit Judge.

[Endorsed]: Filed Jul. 29, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [292]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,638.

CALIFORNIA ADJUSTMENT COMPANY (a
Corporation),

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY (a Corpora-
tion),

Defendant.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS,
that whereas, lately in a District Court of the United
States, in and for the Northern District of Califor-
nia, Second Division, in a suit depending in said
court between the California Adjustment Company,
a corporation, as plaintiff, and Southern Pacific
Company, a corporation, as defendant, a judgment
was rendered against the said Southern Pacific Com-
pany, a corporation, for the sum of Three thousand
nine hundred twenty-eight and 1/100 Dollars

(\$3928.01), together with costs and disbursements in the additional sum of \$38.70, and the said Southern Pacific Company, a corporation, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit and a citation having issued directed to said California Adjustment Company, a corporation, citing and admonishing it to be and appear at the session of the United States Circuit Court of Appeals for the Ninth Circuit to be held at the City of San Francisco, State of California, in said court, on the 25th day of August, 1915. [293]

NOW, THEREFORE, in consideration of the premises and of such writ of error the United States Fidelity & Guaranty Company, a corporation, organized and existing under the laws of the State of Maryland and having its principal place of business in the City of Baltimore, in said State, and having a paid-up capital and surplus of Two Million Dollars (\$2,000,000), duly incorporated under the laws of said State of Maryland for the purpose of making and guaranteeing and becoming surety upon bonds or undertakings required or authorized by law, and which said corporation has complied with all the requirements of the laws of the State of California regulating the admission and right of said corporation to transact such business in said State, is held and firmly bound unto the above-named plaintiff, California Adjustment Company, a corporation, in the full and just sum of Five Thousand Dollars (\$5000), lawful money of the United States, to be paid to said plaintiff, California Adjustment Com-

pany, its successors or assigns, for which payment well and truly to be made, the said United States Fidelity & Guaranty Company, a corporation, binds itself by these presents.

The condition of the above obligation is such that if the said Southern Pacific Company, a corporation, the defendant in said action, and plaintiff in error aforesaid, shall prosecute said writ of error to effect and answer all damages and costs that may be awarded against it if it fails to make its said plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the said United States Fidelity & Guaranty Company, a corporation, has caused this obligation to be signed by its duly authorized attorney in fact and its corporate [294] seal to be hereunto affixed at San Francisco, California, this 30th day of July, 1915.

UNITED STATES FIDELITY &
GUARANTY COMPANY,

[Seal]

By H. V. D. JOHNS,
Attorney in Fact.

By BRADLEY CARR,
Attorney in Fact.

State of California,
City and County of San Francisco,—ss.

On this 30th day of July, in the year one thousand nine hundred and 15, before me, M. J. Cleveland, a Notary Public in and for the City and County of San Francisco, personally appeared H. V. D. Johns and Bradley Carr, known to me to be the persons whose names are subscribed to the

within instrument as the attorneys in fact of the United States Fidelity and Guaranty Company, and acknowledged to me that they subscribed the name of the United States Fidelity and Guaranty Company thereto as principal, and their own names as attorneys in fact.

[Seal]

M. J. CLEVELAND,
Notary Public in and for the City and County of
San Francisco, State of California.

The above and foregoing bond upon writ of error is hereby approved, and execution stayed pending the determination of said writ.

Dated July 30th, 1915.

WM. W. MORROW,
Judge.

[Endorsed]: Filed Jul. 30, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [295]

[**Certificate of Clerk of U. S. District Court to
Transcript of Record.**]

*In the District Court of the United States, in
and for the Northern District of California,
Second Division.*

No. 15,638.

CALIFORNIA ADJUSTMENT COMPANY, a
Corporation,

Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Defendant.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify the foregoing two hundred ninety-five (295) pages, numbered from 1 to 295, inclusive, to be a full, true and correct copy of the record and proceedings in the above-entitled cause, as the same remains of record and on file in the office of the clerk of said court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is \$281.30; that said amount was paid by the Southern Pacific Company, and that the original writ of error and citation issued in said cause are hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 30th day of August, A. D. 1915.

[Seal]

WALTER B. MALING.

Clerk U. S. District Court, Northern District of California.

[Ten Cent Internal Revenue Stamp. Canceled Aug. 30, 1915. W. B. M.] [296]

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

United States of America,
Ninth Judicial Circuit,—ss.

Writ of Error.

The President of the United States of America:
To the Honorable the Judge of the District
Court of the United States for the Northern
District of California, Second Division, Greet-
ing:

Because, in the record and proceedings, as also
in the rendition of the judgment of a plea, which
is in the said District Court, before you, at the
March, 1915, term thereof, wherein Southern Pa-
cific Company, a corporation, is plaintiff in error,
and California Adjustment Company, a corpora-
tion, is defendant in error, and wherein said Cali-
fornia Adjustment Company, a corporation, was
plaintiff and said Southern Pacific Company, a cor-
poration, was defendant, a manifest error has hap-
pened, to the great damage of the said Southern Pa-
cific Company, a corporation, the plaintiff in error,
as by its complaint appears:

We, being willing that error, if any hath been,
should be duly corrected, and full and speedy jus-
tice done to the parties aforesaid in this behalf,
do command you, if judgment be therein given, that
then, under your seal, distinctly and openly, you
send the record and proceedings aforesaid, with all
things concerning [297] the same, to the United

States Circuit Court of Appeals, for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, where said court is sitting, on the 25th day of August, 1915, and within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable EDWARD D. WHITE,
Chief Justice of the United States Circuit

J. A. S. ~~Judge, Ninth Circuit, Northern District of~~
Dep. Clk. ~~California,~~ the 30th day of July, A. D. 1915.

[Seal] WALTER B. MALING,

Clerk of the District Court of the United States for
the Northern District of California, Second
Division.

By J. A. SCHAERTZER,
Deputy Clerk.

Allowed by

WM. W. MORROW,
United States Circuit Judge. [298]

Due service and receipt of a copy of the within
Writ of Error is hereby admitted this 30th day of
July, 1915.

HOEFLER, COOK, HARWOOD &
MORRIS, and
ALFRED J. HARWOOD,
Attorneys for Plaintiff and Defendant in Error.

[Endorsed]: No. 15,638. United States Circuit Court of Appeals, Ninth Judicial Circuit. Southern Pacific Company, Plaintiff in Error, vs. California Adjustment Co., Defendant in Error. Writ of Error. Filed Jul. 30, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

The answer of the Judges of the District Court of the United States, in and for the Northern District of California.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded. By the Court.

[Seal]

WALTER B. MALING,
Clerk. [299]

Citation on Writ of Error.

United States of America,

Northern District of California,—ss.

The President of the United States, to California Adjustment Company, a corporation, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, on the 25th day of August, 1915, being within thirty (30) days from the date hereof, pursuant to

a Writ of Error filed in the clerk's office of the District Court of the United States for the Northern District of California, Second Division, wherein Southern Pacific Company, a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Southern Pacific Company, a corporation, plaintiff in error, as in the said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable WILLIAM W. MORROW, United States Circuit Judge for the Ninth Circuit, Northern District of California, this 30th day of July, A. D. 1915.

WM. W. MORROW,
United States Circuit Judge. [300]

Due service and excerpt of a copy of the within Citation on Writ of Error is hereby admitted this 30th day of July, 1915

HOEFLER, COOK, HARWOOD &
MORRIS, and

ALFRED J. HARWOOD,
Attorneys for Plaintiff and Defendant in Error.

[Endorsed]: No. 15,638. United States Circuit Court of Appeals, Ninth Judicial Circuit. Southern Pacific Company, Plaintiff in Error, vs. California Adjustment Co., Defendant in Error. Citation on Writ of Error. Filed Jul. 30, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No. 2643. United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Company, a Corporation, Plaintiff in Error, vs. California Adjustment Company, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Northern District of California, Second Division.

Filed August 30, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

*United States Circuit Court of Appeals for the
Ninth Circuit.*

SOUTHERN PACIFIC COMPANY, a Corpora-
tion,

Plaintiff in Error,

vs.

CALIFORNIA ADJUSTMENT COMPANY, a
Corporation,

Defendant in Error.

**Order Extending Time to [September 2, 1915] to
File Record on Writ of Error and to Docket
the Cause.**

Good cause appearing therefor, it is hereby ordered that the plaintiff in error may have to and including September 2, 1915, in which to file its record on writ of error and to docket the cause in the

United States Circuit Court of Appeals for the
Ninth Circuit.

Dated August 24, 1915.

WM. W. MORROW,
Circuit Judge.

[Endorsed]: No. 2643. United States Circuit
Court of Appeals for the Ninth Circuit. Order
Under Rule 16 Enlarging Time to — to File
Record Thereof and to Docket Case. Filed Aug.
25, 1915.. F. D. Monckton, Clerk. Refiled Aug.
30, 1915. F. D. Monckton, Clerk. 6